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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In re:

4 PLATINUM-BEECHWOOD LITIGATION 18 Civ. 06658 (JSR)

5 -----x
6 MARTIN TROTT and CHRISTOPHER 18 Civ. 10936 (JSR)
7 SMITH, as Joint Official
8 Liquidators and Foreign
9 Representatives of PLATINUM
10 PARTNERS VALUE ARBITRAGE FUND LP
(in Official Liquidation) and
11 PLATINUM PARTNERS VALUE ARBITRAGE
12 FUND LP (in Official Liquidation)

13 Plaintiffs,

14 v.

15 PLATINUM MANAGEMENT (NY) LLC,
16 et al.,

17 Defendants.

18 -----x Trial

19 New York, N.Y.

20 December 9, 2022
21 9:30 a.m.

22 Before:

23 HON. JED S. RAKOFF,

24 District Judge
25 and a Jury

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APPEARANCES

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Also Present:

Michael Robson, Paradocs Motion Support

Esterah Brown, Paralegal, Curtis Mallet

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(In open court; jury not present)

MR. HERTZBERG: Your Honor, before the jury comes in,
we have just a few minutes on two --

THE COURT: No.

MR. HERTZBERG: Thank you.

THE COURT: I am very concerned at the rate this case
is going at. I think from now on, except in most extraordinary
circumstances, there will be no sidebars.

(Continued on next page)

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SanFilippo - Direct

1 (Jury present)

2 THE COURT: Counsel, you have two questions.

3 Good morning, ladies and gentlemen. So I like the
4 jersey juror No. 3 is wearing, but, of course, we didn't make
5 it past the -- yes. Well, there you go.

6 Counsel has two more questions.

7 The exhibits that were started to be shown yesterday
8 have now been received on consent.

9 MR. HERTZBERG: Mr. Robson, would you please pull up
10 Exhibit 690.

11 Mr. Robson, could you please go to the last page of
12 690. Could you highlight, Mr. Robson, just the entries on the
13 top third. There are three categories there, just highlight
14 the top third.

15 JOSEPH SANFILIPPO, resumed.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. HERTZBERG:

18 Q. Mr. SanFilippo, the line item, management fee payable as of
19 March 31, 2016. I'm sorry. As of 4/30/2016, can you explain
20 to the jury what that entry means, please.

21 A. Sure. Those are management fees that were charged, but
22 remain unpaid as of April 30th, 2016.

23 MR. HERTZBERG: Mr. Robson, could you please pull up
24 687. Again, go to the last page and highlight the substantive
25 part of the document. Could you highlight the management fee

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SanFilippo - Cross

1 payable line.

2 Q. Mr. SanFilippo, could you explain to the jury the
3 significance of this line and how it differs from the one that
4 they just saw.

5 A. Sure. The previous exhibit or the management fees that
6 remained unpaid for the onshore feeder fund, PPVA USA fund,
7 these are the unpaid fees for the Intermedia fund, which is the
8 fund in between the offshore feeder and the master fund.

9 MR. HERTZBERG: Thank you, Mr. SanFilippo.

10 THE COURT: Cross examination.

11 CROSS-EXAMINATION

12 BY MR. GLUCK:

13 Q. Good morning, Mr. SanFilippo.

14 A. Good morning.

15 Q. Did you have preparations with defendants prior to your
16 testimony here today?

17 A. Yes.

18 Q. Did you fly in from Ohio?

19 A. I didn't fly in from Ohio for the preparation. I live in
20 New Jersey.

21 Q. I thought you said that you worked at an Ohio daycare
22 facility as a CFO?

23 A. Yes, I work remotely.

24 Q. Understood. Who owns that daycare facility?

25 A. That group of daycare facilities is owned by a group of

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SanFilippo - Cross

1 individuals. The majority owner is a fellow by the name of
2 Jacob Sahd.

3 MR. GLUCK: Mr. Parson, please call up PX 946, which
4 is a newly marked exhibit. Please go to the leadership team.

5 Q. Whose picture is this?

6 A. It's a picture of Ezra Beren.

7 Q. Is that Mr. Huberfeld's son-in-law?

8 A. It is.

9 Q. He runs this place?

10 A. He is the CEO.

11 Q. Is that a relevant fact?

12 MR. HERTZBERG: Objection.

13 THE COURT: Sustained.

14 Q. Does Mr. Huberfeld's family have interest in this facility?

15 A. They are a minority owner, yes.

16 Q. Does the Bodner family have interest in this facility?

17 A. No, they do not.

18 Q. The Huberfeld family is funding your pay checks?

19 A. The operations of the company are funding the paychecks.

20 Q. Did you formally act as a CFO for a Puerto Rican bank?

21 A. I did.

22 MR. GLUCK: Mr. Parson, please call up PX 947.

23 Sorry. We would like to move this particular exhibit
24 into evidence, presently 946.

25 MR. HERTZBERG: 401.

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SanFilippo - Cross

1 THE COURT: Sustained.

2 MR. GLUCK: Go to the second page, please.

3 Q. Mr. SanFilippo, were you the controller at International
4 Financial Enterprise Bank?

5 A. I was.

6 Q. Did that bank receive a wire transfer from Mark Nordlicht?

7 A. No.

8 Q. No?

9 A. No.

10 Q. Anyone in Mark Nordlicht's family?

11 A. Excuse me?

12 Q. Anyone in Mark Nordlicht's family?

13 A. So there were, I believe, four or five trusts that owned
14 ownership interests in that bank related to the Nordlicht
15 family.

16 MR. GLUCK: We would like to move this LinkedIn
17 exhibit, 947, into evidence.

18 MR. HERTZBERG: 401.

19 THE COURT: Sustained.

20 MR. GLUCK: Mr. Parson, please call up 949.

21 Q. Do you see any of the wire transfers from the Nordlicht
22 family on this exhibit?

23 MR. HERTZBERG: 401.

24 MR. GLUCK: Credibility, your Honor.

25 THE COURT: I think the word is bias, but anyway,

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1 overruled.

2 THE WITNESS: I'm sorry. Can you repeat the question?

3 Q. Do you see any wire transfers from the Nordlicht family on
4 this exhibit?

5 A. Wire transfers to anyone in particular or --

6 Q. Any others?

7 THE COURT: You want to point him to some particular
8 item.

9 Q. Gilad Kalter, is that Mr. Nordlicht's wife?

10 A. Yes.

11 Q. Quinn Emanuel, is that Mr. Nordlicht's counsel?

12 A. It is, yes.

13 Q. Goldstone Partners, is that connected with Mr. Nordlicht?

14 A. I believe so.

15 Q. Maria SanFilippo?

16 A. That is my wife, yes.

17 MR. GLUCK: I move this exhibit to be brought into
18 evidence. Credibility.

19 MR. HERTZBERG: 401, 403.

20 THE COURT: Well, those, I can't rule on those because
21 what hasn't yet been established is what accounts these entries
22 are from and to who.

23 Do you recognize these transfers?

24 THE WITNESS: I recognize some of the companies on
25 this document.

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SanFilippo - Cross

1 THE COURT: And these are transfers to who?

2 THE WITNESS: They're transfers to a variety of
3 individuals and companies.

4 THE COURT: So, counsel.

5 MR. GLUCK: Could you please provide copies.

6 THE COURT: You haven't established foundation.

7 BY MR. GLUCK:

8 Q. Mr. SanFilippo, during your time as controller of the bank,
9 all the accounts in question that we just went over were
10 established through you; is that correct?

11 A. Of the bank itself, yes.

12 Q. And Mr. Stadtmayer raised some of these transfers in his
13 contention that Mr. Nordlicht was evading his bankruptcy
14 estates. I don't know if I said that correctly, but did you
15 understand the question?

16 MR. HERTZBERG: 401, 403.

17 THE COURT: So let me ask the witness.

18 You were comptroller of what bank at this time?

19 THE WITNESS: I was controller of a bank. The name of
20 the bank was International Financial Enterprise Bank. It later
21 changed its name to NextBank International.

22 THE COURT: And is it correct that transfers were made
23 to or from Nordlicht-related persons or entities to or from or
24 through that bank at the time that these documents that we're
25 looking at?

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SanFilippo - Cross

1 THE WITNESS: So the group of Nordlicht trusts along
2 with another group of individuals purchased all the outstanding
3 shares of that bank, I believe in early 2020 or late 2019.

4 THE COURT: At this point in your career, you were
5 working for a bank that was owned by Nordlicht-related entities
6 or persons, yes?

7 THE WITNESS: It was owned by a group of trusts that
8 had the Nordlicht family's beneficiaries. The trustees of
9 those trusts were, I believe, family members of Mark Nordlicht.

10 THE COURT: So the answer to my question is yes;
11 correct?

12 THE WITNESS: Yes.

13 THE COURT: So when did you move from that position to
14 your next position?

15 THE WITNESS: I believe it was November of 2021.

16 THE COURT: And how did you come to get the position
17 you now hold?

18 THE WITNESS: So Ezra Beren, who I worked with while I
19 was at Platinum, he was a portfolio manager, he had called me
20 when I was actually away on vacation with my family. He had
21 told me he was running a childcare center and they're looking
22 to make a change with a person they were using as their
23 CFO/controller. He asked me if I would be interested in
24 working with him. After some deliberation, I accepted his
25 offer.

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SanFilippo - Cross

1 THE COURT: And that entity, it's the Brightside
2 Academy of Ohio, is that it?

3 THE WITNESS: Yes.

4 THE COURT: And some of the people who have been the
5 subject of this lawsuit are also involved in that, have an
6 ownership interest or something like that; is that right?

7 THE WITNESS: Yes, that's correct.

8 THE COURT: I think that's enough.

9 MR. GLUCK: Agreed.

10 BY MR. GLUCK:

11 Q. One question. The purpose of the \$10,000 transfer to your
12 wife --

13 MR. HERTZBERG: 401, 403.

14 THE COURT: Overruled.

15 A. So I was doing some work on a company that Mr. Nordlicht
16 was invested in. We flew down to San Francisco and I helped
17 him with some diligence. At that time, I didn't have my own
18 bank account, so he wired it to an account that my wife owns.

19 Q. It was a payment to you for services rendered?

20 A. Correct.

21 Q. Now, you said you work from home now. Was that also the
22 case when were you working at Platinum?

23 A. For a short period of the time. For a majority of the time
24 I was at Platinum, I worked in its offices in Manhattan.

25 Q. At what times did you work from home?

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SanFilippo - Cross

1 A. So, I believe it was from May of 2014 through July of 2014,
2 and then I returned to the office for a couple of months, and
3 then I worked from home from, I believe it was September
4 through the end of the year, and then I returned full-time in
5 the office in January of 2015.

6 MR. GLUCK: My apologies. I forgot to move in
7 Exhibit 949.

8 MR. HERTZBERG: 401, 403.

9 THE COURT: Received.

10 (Plaintiff's Exhibit 949 received in evidence)

11 Q. Did you have any involvement in the creation of Beechwood?

12 A. No.

13 Q. Did you know much about Beechwood?

14 A. No.

15 Q. Did you have any involvement in the creation of Black Elk
16 Opportunities Fund?

17 A. No.

18 Q. Do you know much about the Black Elk Opportunities Fund?

19 A. I know generally what it is, but that didn't fall under my
20 responsibilities when I worked for Platinum. There was another
21 CFO that oversaw that fund.

22 Q. Who is that CFO?

23 A. Naftali Manela.

24 Q. What was Naftali Manela's job at Platinum Management?

25 A. So he didn't have a job at Platinum Management. He worked

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SanFilippo - Cross

1 for a related hedge fund advisor. He worked for Platinum
2 Partners Credit Opportunities Management Fund. I believe I
3 said that right, I'm not quite sure. But it was the management
4 company for a group of funds that was the Platinum Credit
5 Opportunities Fund. I believe he worked in that management
6 company from approximately 2008 through early -- actually
7 through -- I think through early 2016. At some point, he had
8 also taken the COO position of the entire group of investment
9 managers, including Platinum Management New York LLC. I
10 believe that was in early 2015.

11 Q. So you didn't take into consideration anything having to do
12 with Beechwood or BOF when you're preparing these financial
13 statements, did you?

14 A. I did.

15 Q. You did?

16 A. Yes.

17 Q. How?

18 A. The fund had certain liabilities over its time. I think
19 primarily in '14 and '15 or '15 through '16, and those
20 liabilities were recorded on the books of Platinum Partners
21 Value Arbitrage Fund.

22 Q. Do you know what Beechwood was doing with that at that
23 time?

24 A. No.

25 MR. GLUCK: Please call up DX 170, the Black Elk

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SanFilippo - Cross

1 session. We move this into evidence.

2 MR. HERTZBERG: No objection.

3 THE COURT: Received.

4 (Defendant's Exhibit 170 received in evidence)

5 MR. GLUCK: Will you please go to the Black Elk page,
6 the notes, please.

7 Q. Is this the equivalent document that we looked at yesterday
8 when the Court asked you whether there were notes about the
9 explosion, Black Elk in 2013? This is 2012; right?

10 A. This is the 2012 financial statement of Platinum Partners
11 Value Arbitrage Fund, correct.

12 Q. When was this issued?

13 A. Can you turn to the opinion page. There should be a date
14 on it.

15 Q. Please.

16 THE COURT: Someone should have a hard copy of this.
17 Would you give it to the witness, please.

18 A. The audit report was issued June 28th, 2013.

19 Q. June 28th?

20 A. Correct.

21 Q. When was the Black Elk explosion?

22 A. I'm not really sure. It could have been either late '12 or
23 late '11. I don't remember the exact timing.

24 Q. Are there any notes on this \$215 million Black Elk
25 position?

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SanFilippo - Cross

1 A. Can you give me a minute to review the document?

2 Q. Of course. Just let us know when you're done.

3 A. I don't see any notes, no.

4 Q. Why not?

5 A. I'm not sure. We discussed it with our auditors. The
6 auditors were fully aware. We discussed it with our investors
7 during investor call. Really not sure why it was not included
8 in the financial statement.

9 Q. Nearly 30 percent of the fund?

10 A. 30 percent of the fund, correct.

11 MR. GLUCK: Mr. Parson, please call up PX 761.

12 Q. What was your role in preparing this monthly NAV statement?

13 A. So this is not a NAV statement. This is a long short
14 position summary.

15 Q. Part of the monthly NAV packs; right?

16 A. It's one of the supporting reports.

17 Q. Did you know that in April of 2016, Golden Gate was
18 defunct?

19 MR. HERTZBERG: Objection.

20 THE COURT: Overruled.

21 A. Can you repeat the question.

22 Q. Did you know that in April of 2016, Golden Gate was
23 defunct?

24 A. Defunct?

25 Q. Defunct.

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SanFilippo - Cross

1 A. What do you mean by defunct? Bankrupt? I'm not sure what
2 you mean by defunct.

3 Q. As a CFO, you don't know what defunct means?

4 MR. HERTZBERG: Objection.

5 THE COURT: Sustained. You want to tell him what you
6 meant.

7 Q. No longer operating.

8 A. I don't recall that Golden Gate was no longer operating as
9 of April 2016.

10 Q. No one told you that?

11 A. If they did, I don't recall it at that point in time.

12 Q. Do you know a guy named Jed Latkin?

13 A. I do.

14 Q. Would you work with him at Platinum?

15 A. He was a portfolio manager at Platinum. I didn't work
16 directly with him, but we worked together at Platinum at the
17 same time.

18 Q. He never told you that Golden Gate was no longer operating?

19 A. Jed Latkin? No.

20 Q. When you would have these meetings to provide information
21 to your auditors and your valuers, were there any
22 instructions given to Jed Latkin or any of the portfolio
23 managers, they weren't allowed to talk about anything related
24 to these assets?

25 A. Absolutely not.

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SanFilippo - Cross

1 MR. GLUCK: Mr. Parson, please highlight the Lafitte
2 and Northstar GOM holdings sections.

3 Q. Mr. SanFilippo, what do you understand the assets of
4 Northstar to be as of April 2016?

5 A. Approximately \$190 million value.

6 Q. Sorry. That was not my question, but I think that was a
7 mistake.

8 PPVA is valuing its equity in Northstar at
9 approximately \$190 million; right?

10 A. Yes, both its preferred and common equity.

11 Q. Yeah, preferred and common.

12 A. Yes.

13 Q. What did you understand the assets of Northstar to be at
14 this time?

15 A. The assets of Northstar were reserves, oil reserves.

16 Q. Where did they come from?

17 A. So, a portion of Northstar's portfolio was purchased from
18 Black Elk.

19 Q. Were you aware that Black Elk sold all or substantially all
20 of its assets in the Renaissance sale in 2014?

21 A. They sold the majority of their assets, yes, I was aware of
22 that.

23 Q. What do you mean by majority?

24 A. They sold a majority of their assets to Northstar.

25 Q. What do you mean by majority?

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SanFilippo - Cross

1 A. More than half. I don't know what the exact percentage
2 was, but it was a large amount of their assets.

3 Q. CFO. More than 75 percent?

4 A. Possibly.

5 Q. More than 90 percent?

6 A. This was eight years ago.

7 Q. More than 90 percent?

8 A. If you point me to a document --

9 Q. I'm just asking for what you knew.

10 A. I already answered it.

11 Q. Did you know it was more than 90 percent?

12 A. I think I already answered it.

13 Q. Was it a yes?

14 A. If you want to repeat the answer that I answered before, we
15 could reread it.

16 THE COURT: Well, this is the a worthless colloquy, so
17 let's put a fresh question.

18 Were you aware of what percentage of its assets had
19 been sold as of --

20 THE WITNESS: I was aware at the time --

21 THE COURT: You were aware at the time?

22 THE WITNESS: But sitting here today, I can't remember
23 the exact percentage.

24 THE COURT: I understood that. So you would have been
25 aware at the time of whether it was 50 percent or 75 percent or

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SanFilippo - Cross

1 90 percent or whatever, yes?

2 THE WITNESS: Yes.

3 THE COURT: And if it were the 90 percent or more, how
4 would that impact, if at all, Platinum's financial statements?

5 THE WITNESS: So Platinum owned interests in both
6 Black Elk and Northstar. So, theoretically, at that point in
7 time or what would have happened at that point in time is there
8 would have been a reduction in investment value of Black Elk
9 and an increase in investment valuation of Northstar.

10 Q. But Black Elk sold its assets to Renaissance for cash;
11 right?

12 A. I believe so, yes. I think I might be just getting
13 confused with the facts. It's been eight years.

14 MR. GLUCK: PX 175, please.

15 Q. Do you recognize this as a copy of the asset purchase
16 agreement to Northstar Lafitte?

17 I made a mistake with that, but you can say what this
18 document is.

19 A. So this is a purchase agreement of assets that later came
20 to be known as Northstar.

21 MR. GLUCK: Thank you. We move to have this in
22 evidence.

23 MR. HERTZBERG: No objection.

24 THE COURT: Received.

25 (Plaintiff's Exhibit 175 received in evidence)

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SanFilippo - Cross

1 MR. GLUCK: PX 173, please, the one I was talking
2 about last time.

3 Q. Do you recognize this document?

4 A. This is a purchase and sale agreement by and between
5 Black Elk as seller and Northstar as purchaser.

6 Q. Would you have seen something like this in your role as
7 CFO?

8 A. Yes.

9 MR. GLUCK: Move this into evidence, please.

10 MR. HERTZBERG: No objection.

11 THE COURT: Received.

12 (Plaintiff's Exhibit 173 received in evidence)

13 MR. GLUCK: Mr. Parson, please call up DX 622,
14 page 72.

15 Move into evidence.

16 These are the consolidated financial statements.

17 MR. HERTZBERG: No objection.

18 THE COURT: Received.

19 (Defendant's Exhibit 622 received in evidence)

20 MR. GLUCK: Please go to page 72.

21 Q. Are these related party transaction disclosures?

22 A. Yes.

23 Q. Where is the Beechwood related party transactions?

24 A. I believe they're under financing transactions.

25 Q. That's what that is?

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SanFilippo - Cross

1 A. Yes.

2 MR. GLUCK: DX 625, please, page 55.

3 Q. This is a disclosure about a master fund guarantee. Do you
4 see that?

5 A. Yes.

6 MR. GLUCK: Mr. Parson, just highlight the second
7 sentence of the third paragraph. Fourth. I'm sorry. I didn't
8 see the top. "However."

9 Q. Now, would you have written that?

10 A. I would have.

11 Q. When was this issued?

12 A. I'm sorry. Can we turn to the --

13 MR. GLUCK: Of course. Cover page, please.

14 A. I think I have it here. September 16th, 2015.

15 Q. No one told you Golden Gate had stopped operating by that
16 point?

17 A. I'm not sure what that would have to do with that
18 particular disclosure.

19 Q. What guarantees were you talking about?

20 A. Can we turn back to the page.

21 So what this note, not this particular paragraph
22 that's highlighted, what this note is discussing is it's
23 discussing the master fund's guarantees of certain debt owed by
24 its portfolio companies. That debt would have been accounted
25 for in the valuation of the portfolio companies themselves. In

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1 other words, when you do a valuation and you come up with a
2 market cap, you add back any cash that the company has on the
3 balance sheet and you subtract its liabilities.

4 Q. The holder of this debt was Beechwood?

5 A. Right, but Platinum was guaranteeing it.

6 Q. But the debt had already defaulted and Beechwood just
7 wasn't enforcing its rights, you knew that; right?

8 MR. HERTZBERG: Form.

9 THE COURT: Sustained as to form.

10 Q. Did you know that the debt these operating companies,
11 Golden Gate, Northstar couldn't pay interest and these debts
12 were in default, but Beechwood just wasn't enforcing it?

13 A. Well, they were paying their interest.

14 Q. The companies were or Platinum?

15 A. So Platinum was the funder of the companies as it's a
16 100-percent owner. So Platinum owned all the capital of all
17 the companies. In order to make the interest payments,
18 Platinum was advancing funds to the portfolio company, in this
19 case, Golden Gate.

20 Q. Let's keep going with Golden Gate. If the company wasn't
21 operating, how were they going to pay the principal back?

22 A. I'm sure the plan was for the company to operate in the
23 future, it wasn't operating at the time, but if the debt came
24 due, then, obviously, the master fund would advance funds to
25 the company in order to pay its debt.

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SanFilippo - Cross

1 Q. Now, how does that jive with your statement that master
2 fund had not had prior claims or losses? Isn't every interest
3 payment a loss? Pursuant to these contracts and expects the
4 risk of loss to be remote.

5 MR. HERTZBERG: Form.

6 THE COURT: Well --

7 A. An interest expense is an interest expense of the portfolio
8 company, it's not a loss of the master fund.

9 Q. It came out of the master fund's bank account?

10 A. It came out of the master fund's bank account as an
11 investment in Golden Gate as an asset.

12 Q. And if it were shut down, but you had hopes that it would
13 go up, how is that the risk of loss being remote?

14 A. It's the risk of loss being remote considering the fact
15 that Golden Gate had oil reserves that were worth a certain
16 amount of money as determined by the third-party engineer, D&M.

17 MR. GLUCK: Let's go to PX 538.

18 Q. When is the first time you became aware of this valuation?

19 A. I'm not sure by looking at this email what this is a
20 valuation of.

21 Q. You don't know? Nobody shared this with you?

22 MR. HERTZBERG: Form.

23 THE COURT: Do you recollect whether this was shared
24 with you or is it your best recollection it was not shared with
25 you?

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SanFilippo - Cross

1 A. So after reading the whole email, this was not shared with
2 me during my time at Platinum, but I had seen it subsequent to
3 my time at Platinum.

4 Q. Did you ever attend a so-called partner dinner of the
5 Platinum Partners?

6 A. No, I wasn't a partner.

7 Q. Nobody invited you; right?

8 A. It was only partners, I wasn't a partner.

9 Q. So you don't know anything that was said at those dinners,
10 do you?

11 A. I don't.

12 Q. When you would go into the office, where was your office?

13 A. So, my office was at different places at various different
14 times.

15 Q. Fair point. Before the move, was your office on the third
16 floor?

17 A. It was the fourth floor of --

18 Q. Excuse me --

19 A. -- West 57th Street.

20 Q. Your office was on the fourth floor?

21 A. Yes.

22 Q. Would you go up to the other floor very often?

23 A. Not very often, no.

24 Q. So you have no idea what's happening on that floor?

25 A. No.

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SanFilippo - Cross

1 MR. GLUCK: PX 417, please.

2 Seek to move this into evidence.

3 MR. HERTZBERG: No objection.

4 THE COURT: Received.

5 (Plaintiff's Exhibit 417 received in evidence)

6 Q. What is your understanding of why -- well, firstly, who is
7 Joane Janczewski, who is she?

8 A. She was the chief operating officer of Platinum Management
9 New York up until --

10 Q. Naftali Manela?

11 A. No. So, she was the COO up until, I believe -- I thought
12 it was -- I thought she had left earlier than this. I'm
13 looking at the date on here of November 2012. I thought she --
14 she had an unfortunate accident and she could no longer work.
15 But she was the COO of Platinum Management New York until her
16 accident, which I thought was in '11, but apparently it must
17 have been in '12 at some point.

18 Q. I don't think she's the most material part of this. But,
19 here's my question: What does chaya mean?

20 A. I think she's referring to a person, but I'm not really
21 sure.

22 Q. Is this the day after the Black Elk explosion?

23 A. I'm not sure what the date of the Black Elk explosion was,
24 but it looks around -- from my recollection, I believe it was
25 either late '11 or late '12, so --

MC9Cplal

SanFilippo - Cross

1 Q. Did you speak with -- day of. Excuse me. Day of. Does
2 that refresh your recollection, that's the day of?

3 A. I don't remember the exact date, but I know it was either
4 late '11 or late '12. So it could have been this date.

5 Q. Did you end up speaking with Ms. Janczewski or otherwise
6 talking about this?

7 A. Honestly, I don't remember at all.

8 Q. Did you ask her why Mr. Bodner seemed anxious?

9 A. I don't remember. This is nine years ago. I don't even
10 remember this -- I don't even remember that she was still with
11 the fund at this time.

12 MR. GLUCK: Move into evidence.

13 THE COURT: Excuse me. In exhibit 417, she is
14 bringing to your attention that Mr. Bodner seemed anxious for
15 data regarding the Black Elk situation, yes?

16 THE WITNESS: Yes. She's saying that Mr. Bodner
17 seemed anxious for the data related to how much more we have to
18 pay the Black Elk investors. I'm not sure which Black Elk
19 investors she's referring to, if that's the Platinum Partners
20 Black Elk Opportunities Fund. I'm not sure why she's asking me
21 for the data. But, yes, I agree she's asking me that question
22 and she's letting me know that David Bodner seemed anxious for
23 the information.

24 THE COURT: Are you saying that you have no idea why
25 she would want to bring to your attention that Mr. Bodner

MC9Cplal

SanFilippo - Cross

1 seemed anxious for this data?

2 THE WITNESS: No, I don't know why she's asking me in
3 particular for the data because I don't know which Black Elk
4 investors she's referring to. There was another fund that was
5 run by another CFO called the Black Elk Opportunities Fund,
6 PPVE fund, I think that's what she's referring to in this
7 email. What I was wondering was why she was asking me that
8 question since I was not the CFO of that fund.

9 THE COURT: Did Mr. Bodner ask you for data from time
10 to time?

11 THE WITNESS: He asked me for data from time to time
12 regarding his capital account within the fund. Other than
13 that, he didn't ask me for any other data.

14 THE COURT: This doesn't relate to his capital account
15 as far as you can tell, yes?

16 THE WITNESS: Unless he was an investor in the
17 Black Elk fund, it would relate to his capital account in the
18 Black Elk fund. But this doesn't relate to his Platinum
19 Partners Value Arbitrage Fund capital account.

20 THE COURT: Go ahead, counsel.

21 MR. GLUCK: PX 225, please. It's already in evidence.

22 BY MR. GLUCK:

23 Q. Mr. SanFilippo, you've seen this document before, haven't
24 you?

25 A. I'm just going to take a minute to read it, if you don't

MC9Cplal

SanFilippo - Cross

1 mind.

2 Q. Sure.

3 A. Yes, after reading it now, I do recall it.

4 Q. Would you please explain to the jury what a side letter is
5 within the context of the hedge fund.

6 A. So a side letter generally, in the context of a hedge fund,
7 refers to any kind of special fee or arrangement with a partner
8 that is different from the other partners in that fund.

9 Q. So let's go through this.

10 PPVA and PPCO, those are the two funds; right?

11 A. Yes.

12 Q. And together, they would typically be called Platinum?

13 A. I think the group of funds is sometimes referred to as
14 Platinum Partners.

15 Q. Platinum Partners. Fair enough. Who are the Platinum
16 Partners?

17 A. Platinum Partners were a group of management companies that
18 managed multiple funds within the Platinum organization.

19 Q. Sorry. Who are the human beings that were the Platinum
20 Partners?

21 A. So speaking for Platinum Management New York LLC, the
22 partners were Mark Nordlicht, the Mark Nordlicht Grantor Trust,
23 and Uri Landesman at this particular point in time. Within the
24 trust, there were multiple beneficiaries. Those beneficiaries
25 were the Nordlicht family, the Bodner family, and the Huberfeld

MC9Cplal

SanFilippo - Cross

1 family. I'm not sure what the ownership was in the other
2 management company structures.

3 Q. Do you recognize the name Implant Sciences?

4 A. Yes, Implant Sciences was a portfolio company that was
5 owned by Platinum Partners.

6 Q. Do you have any awareness of whether Platinum -- do you
7 know what the value of Platinum's investment in Implant
8 Sciences was at this time?

9 A. Is there any document you can point me to to refresh my
10 memory.

11 Q. I probably could.

12 MR. GLUCK: Could you call up the April 2016 NAV
13 statement. It will be close enough.

14 A. This is January 2016. So if you have --

15 Q. It will be close.

16 A. Okay.

17 Q. I was wrong. Well, I'll remind you that the value of
18 Implant Sciences was close to \$70 million. Sound about right?

19 MR. HERTZBERG: Objection.

20 Q. You were a witness in that Implant Sciences bankruptcy;
21 right?

22 MR. HERTZBERG: Objection to both pieces for different
23 reasons.

24 THE COURT: Sustained.

25 Q. Were you a witness in the Implant Sciences bankruptcy?

MC9Cplal

SanFilippo - Cross

1 A. Honestly, I don't remember, but it's certainly possible.

2 When you say witness, meaning that I testified at
3 trial? I did not testify at trial --

4 Q. -- the bankruptcy case, did you remember that?

5 A. I remember being deposed in various cases, but I don't
6 remember implant specifically.

7 Q. PPVA was trying to get its money out of the Implant
8 Sciences investment?

9 MR. HERTZBERG: Objection.

10 MR. GLUCK: Trying to jog the witness's recollection.

11 A. I don't recall --

12 THE COURT: The objection is sustained.

13 Q. What is this document stating purporting to obligate
14 Platinum to do once there were proceeds from Implant Sciences?

15 A. It's obligating them to forward those proceeds to Beechwood
16 or an affiliate of Beechwood to repay the debt of Golden Gate
17 Oil.

18 Q. Now, when did you first know about this side letter?

19 A. I'm sure I learned about it shortly after it was created, I
20 don't know exactly when, but some point in January, I would
21 say.

22 Q. Why wasn't this liability listed -- first of all, do you
23 know how much the debt of Golden Gate Oil was with principal
24 interest around this time?

25 A. I don't remember. If you want to pull up that schedule

MC9Cplal

SanFilippo - Cross

1 again, I can read it off the schedule.

2 Q. Sure. We'll do that. About \$40 million?

3 A. Sounds about right. I don't know if --

4 Q. Sounds about right, it's close enough.

5 MR. HERTZBERG: Objection.

6 THE COURT: Well, he said the witness said it sounds
7 about right. So let's proceed.

8 Q. So why wasn't this \$40 million obligation listed on the
9 April 2016 --

10 A. So as I explained earlier, that was debt of Golden Gate
11 Oil. So when doing the Golden Gate Oil valuation, that would
12 have been subtracted from the total valuation of Golden Gate
13 Oil. Accounting rules don't call for it to be listed
14 separately as a liability on our books, but what happened is
15 when we paid it, it would show up as an investment in Golden
16 Gate Oil and any debt would be reduced from the value of that
17 investment.

18 Q. Walk me through this. You get in excess, you, Platinum,
19 get in excess of \$40 million from Implant Sciences; right?

20 A. Yes. So at that point, we record what's called a realized
21 gain or loss on sale. We credit the proceeds of that sale to
22 our bank account. And then let's say, for instance, we have to
23 take that money and repay Golden Gate's debt. What we would do
24 is we would advance money to Golden Gate and treat that as an
25 addition to the debt that Golden Gate owes us.

MC9Cplal

SanFilippo - Redirect

1 Q. You mentioned some investor calls earlier in your
2 testimony. Were you on those calls?

3 A. I was on a few of them.

4 Q. In 2016?

5 A. I don't recall exactly which calls I was on, but I was on a
6 few investor calls.

7 Q. Here's my question, do you recall anyone ever mentioning
8 this side letter on any of those investment calls?

9 A. I honestly don't remember if I was even on any investor
10 calls in 2016.

11 MR. GLUCK: No further questions.

12 REDIRECT EXAMINATION

13 BY MR. HERTZBERG:

14 Q. Mr. SanFilippo, you left Platinum at the end of 2016;
15 correct?

16 A. Yes.

17 Q. Since that time, have you had any contact with David
18 Bodner?

19 A. No.

20 Q. Have you had any contact with any member of David Bodner's
21 family?

22 A. No.

23 MR. HERTZBERG: Can we call up DX 3, please.

24 Q. Do you recognize this document, Mr. SanFilippo?

25 A. Yes, this is the 10-K that was filed with the SEC for

MC9Cplal

SanFilippo - Redirect

1 Black Elk Energy Offshore Operations for the period ending
2 December 31st, 2012.

3 MR. HERTZBERG: We offer it. I'm sorry. It's in.

4 Can you turn, please, Mr. Robson, to PDF page 6, which
5 is page 1 of the document.

6 (Continued on next page)

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SanFilippo - Redirect

1 BY MR. HERTZBERG:

2 Q. Mr. SanFilippo, can you see at the top of this page when
3 this document was filed with the SEC?

4 A. I believe it was April 3, 2013.

5 Q. Does that mean that this document has been publicly
6 available since April 3, 2013?

7 A. Yes.

8 Q. And any investor or interested person could go online and
9 pull this document, right?

10 A. Yes. This would also be one of the documents that we
11 provided to our valuation agents and our auditors.

12 Q. Okay. So your valuation agents and auditors had this
13 document when they were reviewing your NAVs as of 12/31/13?

14 A. Yes.

15 Q. And 12/31/12, right?

16 A. Yes.

17 Q. And the third full paragraph on this page—you are going to
18 have to zoom out a little bit—starting with November 16, is
19 that a description of the event that occurred on November 16,
20 2012 on the West Delta platform in the Gulf of Mexico?

21 A. Yes.

22 Q. Mr. Robson, if you would turn, please, to page 18 -- I'm
23 sorry, PDF page 23, page 18 of the document.

24 And right at the top, under "risk factors," item 1A,
25 do you see the heading where it says "risks related to the oil

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SanFilippo - Redirect

1 and natural gas industry and our business"?

2 A. I do.

3 Q. And you do you see the sentence below it that says: We may
4 be subject to claims and liabilities as a result of our
5 ownership of the West Delta platform? Did I read that
6 correctly?

7 A. Yes.

8 Q. Below that, is there another detailed disclosure of the
9 events on November 16, 2012?

10 A. Yes.

11 Q. And if you zoom out of there and you go to the fourth
12 paragraph, perfect, keep going down, keep going down. Right
13 there is great.

14 Do you see there that it says that as of April 10,
15 2013, four civil lawsuits filed by investors and by or on
16 behalf of certain injured or deceased workers against the
17 company? Did I read that correctly?

18 A. Yes.

19 Q. Along with entities affiliated with PPVA Black Elk Equity,
20 LLC. Do you see that?

21 A. Yes.

22 Q. And PPVA Black Elk Equity, LLC, is defined as the company's
23 majority unit holder, right?

24 A. Yes, PPVA Black Elk Equity, LLC is a subsidiary of PPVA.

25 Q. I would like you to pull up DX 569, please.

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SanFilippo - Redirect

1 Mr. Gluck was asking you some questions about
2 Golden Gate Oil. Do you recall that?

3 A. Yes.

4 Q. And the disclosures in the financial statements.

5 A. Yes.

6 Q. And he was asking you some questions about the disclosures
7 regarding Beechwood, correct?

8 A. Yes.

9 Q. Could you pull up page 41 of the financial statements,
10 please, Mr. Robson. It is 42 of the PDF and the second full
11 paragraph, and keep going down to the end of that section.

12 Thank you.

13 Right at the top there, is there a disclosure
14 regarding Beechwood as a related party of the general partner?

15 A. Yes.

16 Q. And a disclosure that Beechwood had purchased 28 million of
17 the Golden Gate senior secured debt. Do you see that?

18 A. Yes, that's correct.

19 Q. And that was disclosed in the 2013 financial statements?

20 A. Yes.

21 Q. And do you see the second paragraph from the bottom there
22 is a reference to Precious Capital. Do you see that?

23 A. Yes.

24 Q. What is Precious Capital?

25 A. Precious Capital was a subsidiary of Platinum Partners

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SanFilippo - Redirect

1 Value Arbitrage Fund.

2 Q. And that was the entity that was the lender on the loan
3 agreement to Golden Gate, correct?

4 A. Yes, I believe they were both the lender and the
5 equityholder.

6 Q. And there is a disclosure there that Precious Capital and
7 Golden Gate amended the loan documents to extend the credit
8 limit and also extended the maturity date to October 1, 2015.
9 Do you see that?

10 A. I do.

11 Q. And that loan was secured by all the assets of Golden
12 Gate?

13 A. Yes.

14 Q. And so the value of Golden Gate as you and your team
15 determined it to be was the collateral for the loan.

16 A. Yes.

17 Q. And the value of Golden Gate as you determined it to be was
18 substantially in excess of the loan amount, correct?

19 A. Yes.

20 Q. And that value that you determined, that you and your team
21 determined at Platinum Management, that had been confirmed
22 through the valuers and the auditors, right?

23 A. Yes, through the auditors as of December 31, 2014 and
24 through the third-party valuation agents at the end of every
25 quarter throughout the year.

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SanFilippo - Redirect

1 Q. If the valuation was reliable, then there was substantial
2 coverage for the loan.

3 A. Yes, that's correct.

4 Q. And the valuation that you assigned to Golden Gate was not
5 determined by the operations of Golden Gate, was it?

6 A. It was not.

7 Q. Remind the jury what your valuation model was based upon.

8 A. The primary input in the valuation model was the reserve
9 report which was prepared by the independent third-party
10 engineer, D&M.

11 Q. And again you didn't take D&M's appraisal, you put it
12 through your model, right?

13 A. Yes, we applied this in multiples.

14 Q. By the way, it says here that the maturity date of the loan
15 was extended. What does that mean?

16 A. That means it wasn't due on its original due date. It was
17 extended. The due date was extended to October 1, 2015.

18 Q. We can pull this down.

19 PX 538, put that up.

20 Do you see the date of Mr. Garza's e-mail is April 5,
21 2013?

22 A. Yes.

23 Q. Mr. Garza was a -- well, where did he work?

24 A. He worked at Black Elk.

25 Q. Were you aware of whether Black Elk was contemplating any

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SanFilippo - Redirect

1 kind of transaction with Golden Gate around this time?

2 A. I was advised that Black Elk was -- I was advised by
3 Mr. Nordlicht that they were looking -- that Black Elk was
4 looking to acquire Golden Gate.

5 Q. So Mr. Garza was an employee of a prospective buyer?

6 A. He was part of the management team of Black Elk, which was
7 a portfolio company that we owned, but the prospective buyer in
8 this deal.

9 Q. And the buyer of the Golden Gate assets.

10 A. Correct.

11 Q. And the buyer is communicating to Mr. Nordlicht what the
12 buyer believed the Golden Gate assets to be worth.

13 A. That is correct, yes.

14 Q. And he is representing the interests of the buyer.

15 A. He is representing the interests of Black Elk Energy.

16 Q. He wants to buy the assets for as cheap as he can get them,
17 right?

18 A. Normally that's what a prospective buyer would do.

19 Q. Okay. And do you recall that yesterday I showed you a
20 reserve report for Golden Gate prepared by D&M and it was dated
21 four months prior to this?

22 A. Yes.

23 Q. And do you recall that I showed you a second one that was
24 dated about seven months after this?

25 A. Yes.

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SanFilippo - Redirect

1 Q. And it is the one -- and your models relied on two of those
2 appraisal reports prepared by D&M.

3 A. Yes, that's correct.

4 Q. Both the one before that e-mail and the one after that
5 e-mail.

6 A. Correct.

7 Q. Mr. Gluck was asking you about a \$40 million liability at
8 Golden Gate Oil. Do you recall that?

9 A. Yes.

10 Q. If you were to have reported that liability at the
11 Golden Gate level and at the PPVA level, which was what
12 Mr. Gluck was suggesting, what would be the net effect of
13 counting it twice?

14 MR. GLUCK: Objection.

15 THE COURT: As it is phrased, sustained, but there is
16 a question that can be put.

17 BY MR. HERTZBERG:

18 Q. The value of Golden Gate as carried on PPVA's books
19 incorporated its \$40 million obligation.

20 A. Yes, it was reduced from the market cap of the company. So
21 typically when you do a valuation of the company, you subtract
22 its debt and you add back any cash that it has on the balance
23 sheet.

24 Q. And if you were to also record that liability at the PPVA
25 level, what would be the net effect?

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SanFilippo - Redirect

1 A. It would be double counting the liability.

2 Q. And would your -- would the financial records of PPVA have
3 been accurate if you had double counted the liabilities?

4 A. No.

5 Q. They would have been materially inaccurate if you had done
6 it that way.

7 A. That's correct.

8 Q. You mentioned that you had attended investor calls handled
9 by Mr. Nordlicht, correct?

10 A. I wasn't on every investor call, but I was on a few.

11 Q. What was the general format of that? Who was invited? How
12 did it work?

13 A. So the investor calls were open to all investors.

14 Typically Mr. Nordlicht would speak on the investor calls, give
15 an update on the portfolio as a whole.

16 Q. And did you assist Mr. Nordlicht in preparing for those
17 calls?

18 A. I don't recall assisting him on any particular call, but it
19 is possible that he would have asked me for a portfolio report
20 prior to any call.

21 Q. And you have specific recollections of what was discussed
22 on those calls?

23 A. I don't really.

24 Q. Do you have any recollection of Mr. Nordlicht discussing
25 the relationship between the general partner and Beechwood on

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SanFilippo - Redirect

1 those calls?

2 A. No, not that -- not on any call that I was part of.

3 Q. Do you recall Mr. Nordlicht discussing the oil and gas
4 positions with the investors in some detail?

5 A. Yes.

6 Q. Were the investors permitted to ask questions of
7 Mr. Nordlicht on those calls?

8 A. Yes.

9 Q. Did some do so?

10 A. Yes.

11 Q. Did you ever come away from those calls with an impression
12 that Mr. Nordlicht had been untruthful?

13 A. No.

14 Q. You would have resigned if Mr. Nordlicht had been
15 untruthful on any?

16 MR. GLUCK: Objection.

17 THE COURT: Sustained.

18 Q. Mr. SanFilippo is there any difference between an
19 encumbrance and a liability?

20 A. An encumbrance is typically an off-balance-sheet obligation
21 or contingent liability. An actual liability is recorded in
22 its dollar amount on the balance sheet.

23 Q. Can we pull up DX 620.12, please.

24 Mr. SanFilippo, can you identify DX 620.12, please.

25 MR. GLUCK: Object. Outside of cross.

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SanFilippo - Redirect

1 MR. HERTZBERG: I haven't offered it.

2 (Counsel confer)

3 THE COURT: The pending question is a yes-or-no
4 question. Can you identify DX 620.12? Yes or no.

5 THE WITNESS: Yes.

6 THE COURT: Put another question.

7 BY MR. HERTZBERG:

8 Q. What is it?

9 A. It's the consent of Platinum Partners Value Arbitrage Fund,
10 LP.

11 MR. GLUCK: Delayed objection. Outside cross.

12 THE COURT: No, I will allow it. You may have
13 recross.

14 However, how much longer do you have?

15 MR. HERTZBERG: This is my last question or set of
16 questions.

17 THE COURT: All right. Go ahead.

18 MR. HERTZBERG: We offer it.

19 MR. GLUCK: Oh. It's a CRZ document. We object to
20 the --

21 MR. HERTZBERG: I'm sorry, your Honor, there was a
22 question pending to Mr. SanFilippo. The objection is
23 overruled. The question is: What is the document.

24 MR. GLUCK: I was responding to the offer. We object.

25 MR. HERTZBERG: I'm sorry. He answered that question.

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SanFilippo - Redirect

1 THE COURT: The question was "what is it" and he said
2 "it is the consent of Platinum Partners Value Arbitrage Fund."
3 I don't think you put a further question, but if you want to
4 put a further question --

5 THE WITNESS: I don't think I got to finish my answer.

6 THE COURT: Excuse me. I don't think I asked you --

7 THE WITNESS: I'm sorry.

8 THE COURT: -- to say anything.

9 THE WITNESS: I apologize, your Honor.

10 THE COURT: Put another question.

11 BY MR. HERTZBERG:

12 Q. Is that your signature on the bottom of the page,
13 Mr. SanFilippo?

14 A. Yes.

15 Q. And what is the purpose of this document?

16 A. It is consent of Platinum Partners Value Arbitrage Fund,
17 LP, to grant the officers listed on this form as authorized
18 signatories of the fund.

19 MR. HERTZBERG: We offer 620.12.

20 MR. GLUCK: I need more than four words.

21 THE COURT: I think what I am intuiting, I could be
22 wrong, you were asking for a *voir dire*.

23 MR. GLUCK: Yes.

24 THE COURT: If I am wrong --

25 MR. GLUCK: Yes. May I?

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SanFilippo - Redirect

1 THE COURT: Yes.

2 VOIR DIRE EXAMINATION

3 BY MR. GLUCK:

4 Q. Mr. SanFilippo, do you note the legend at the bottom of
5 this document says PPVA RH?

6 A. Yes.

7 Q. That's a PPVA document subpoenaed from CohnReznick.

8 And you see the top of the document it says CRZ notes?

9 A. Yes.

10 MR. HERTZBERG: Objection.

11 Q. That is --

12 THE COURT: Excuse me. Overruled. Go ahead.

13 MR. GLUCK: Put another question.

14 BY MR. GLUCK:

15 Q. That is a CRZ notation, isn't it?

16 A. That is a note that CRZ put on this document.

17 MR. GLUCK: That's what we object to, your Honor, not
18 original, authentic document, and that is hearsay, whatever is
19 in that square.

20 THE COURT: So let me ask defense counsel, do you want
21 to redact that little box?

22 MR. HERTZBERG: Definitely, yes.

23 THE COURT: Okay.

24 MR. HERTZBERG: We happened to have received it --

25 THE COURT: So when you show it to the jury, whatever

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SanFilippo - Redirect

1 the techie person needs to redact that part.

2 MR. HERTZBERG: We are doing that now.

3 THE COURT: There we go. Received.

4 (Defendant's Exhibit 620.12 received in evidence)

5 BY MR. HERTZBERG:

6 Q. Do you see the list of officers and personnel who are
7 identified in this written consent?

8 A. Yes.

9 Q. Is this -- and why are these people being identified?

10 MR. GLUCK: Objection. Outside the scope.

11 THE COURT: Yes. Well, you made that point before,
12 but I indicated I would allow it and you could recross.
13 Overruled.

14 A. Can you just repeat the question again, Mr. Hertzberg.

15 THE COURT: What is this?

16 THE WITNESS: It's an authorization of Platinum
17 Partners Value Arbitrage Fund to grant these individuals as
18 authorized signatories on certain accounts within the fund.

19 THE COURT: So this is just something that gives them
20 the right to sign for certain purposes.

21 THE WITNESS: Right. It's something you would provide
22 to a brokerage firm or a bank when setting up an account.

23 THE COURT: Okay.

24 BY MR. HERTZBERG:

25 Q. And what is the significance of the eight or ten people

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SanFilippo - Redirect

1 identified in that list?

2 THE COURT: I don't know what that means. Sustained.

3 MR. GLUCK: Objection.

4 BY MR. HERTZBERG:

5 Q. Was this document provided to the auditors?

6 A. Yes.

7 Q. For what purpose?

8 A. An auditor is required to gather information during the
9 course of their audit, and that information includes a
10 disclosure or verification of who the authorized signatories
11 are on each account.

12 Q. Are these the people entrusted with signatory authority for
13 Platinum Management?

14 MR. GLUCK: Objection. Objection --

15 THE COURT: I heard you.

16 As phrased, sustained.

17 BY MR. HERTZBERG:

18 Q. What are these people entrusted with as reflected in this
19 document?

20 A. They are entrusted with being authorized to make
21 transactions from either a bank or a brokerage account and to
22 enter into binding contract -- binding derivative contracts,
23 including --

24 THE COURT: On behalf of who?

25 THE WITNESS: On behalf of Platinum Partners Value

Mc92Pla2

Steinberg - Direct

1 Arbitrage Fund.

2 BY MR. HERTZBERG:

3 Q. Is David Bodner on that list?

4 A. No, he is not.

5 MR. HERTZBERG: Pass the witness.

6 THE COURT: Okay. Recross.

7 MR. GLUCK: Waive.

8 THE COURT: Pardon?

9 MR. GLUCK: No recross.

10 THE COURT: Thank you very much. You may step down.

11 THE WITNESS: Thank you.

12 (Witness excused).

13 THE COURT: Please call your next witness.

14 (Pause)

15 THE COURT: Call your witness, please.

16 MR. HERTZBERG: Your Honor, for Mr. Bodner we called
17 David Steinberg.

18 DAVID STEINBERG,

19 called as a witness by the defendant,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HERTZBERG:

23 Q. Good morning, Mr. Steinberg. What do you do for a living?

24 A. I invest in real estate projects.

25 Q. And did you formerly work at Platinum Management?

Mc92Pla2

Steinberg - Direct

1 A. I'm not sure if it was Platinum Management or another
2 Platinum entity but, generally speaking, a Platinum hedge fund,
3 yes.

4 Q. What years did you work at Platinum?

5 A. I believe I started as a summer intern in the summer of
6 2009 and then I -- well, I guess it's -- I left -- well, the
7 fund, I guess, closed or was taken over in 2016, so I guess the
8 fall of 2016.

9 And then I was asked to stay on by the receiver that
10 took over the fund in 2016 and I think I stayed there until --
11 working for her until 2017, maybe. And then afterwards, one of
12 the liquidators that was managing one of the feeder funds out
13 of Cayman Islands asked me to work for them to help them, as
14 well, with the plan on recovery. I think that was until 2018.
15 I believe so.

16 Q. Okay. Prior to 2009, what were you doing?

17 A. I was in school.

18 Q. And do you have a degree?

19 A. Yes.

20 Q. What do you -- what did you study?

21 A. Finance.

22 Q. And do you have a bachelor's or a master's?

23 A. I have a master's degree in business administration.

24 Q. Did you come into Platinum after getting your MBA?

25 A. As a summer intern, yes.

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1 Q. And what was your role there?

2 A. So it evolved. You want to give me some time frames to
3 work with?

4 Q. Sure. Why don't you just start at the beginning in 2009
5 and tell us how it evolved.

6 A. Okay. So in 2009 I came as a summer intern. I was working
7 with a portfolio manager. His name was -- is Jonathan
8 Friedman. He had a small portfolio of what they call micro cap
9 stocks that he was trading a liquid strategy. I was working
10 with him.

11 THE COURT: Counsel, fascinating though it is to know
12 what this witness did as a summer intern, and I'm glad to know
13 it was more than pouring coffee, I think maybe we should go to
14 when he was a full-time employee.

15 MR. HERTZBERG: Fair enough, Judge.

16 A. I can accelerate that.

17 Q. Please do, Mr. Steinberg.

18 A. Okay. So I think it was toward the fall of 2009,
19 Mr. Nordlicht hired me, asked me to stay on as a full-time
20 employee. At that point I was working on a strategy that
21 involved credit derivatives and that lasted probably until
22 maybe the beginning of 2010. There was an opportunity in the
23 market at that point at the end of the financial crisis that my
24 strategy was based on, and when that went away, Mr. Nordlicht
25 sort of like reallocated me to a different group of people to

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1 help them with what they were working on.

2 And so the first group that I worked with was with Dan
3 Small and David Levy. They were portfolio managers. I also
4 had a title as a portfolio manager, but they were the ones that
5 were running their strategy, which was a secured lending
6 platform. They were lending money to private companies.

7 Q. Did you report to Mr. Nordlicht?

8 A. Yes. As well as -- I reported to Mr. Nordlicht as well as
9 to David Levy and Dan Small.

10 Q. Did -- who was Uri Landesman?

11 A. Uri joined, I think, later from the time frame that we are
12 talking about right now, but he was brought -- I think his
13 title was president. My understanding was that he was brought
14 on to raise institutional capital for the fund.

15 Q. Did you understand Mr. Nordlicht to be the senior executive
16 of the organization?

17 A. Yes.

18 Q. And did Mr. Landesman also have a senior position of
19 authority when he came on?

20 A. I don't -- I guess authority depends on -- in the realm of
21 what I was working on in terms of making investments, helping
22 determine strategy with investments, Mr. Landesman was probably
23 not involved, so he had other areas that he was in charge of,
24 like marketing and the team that worked with the marketing team
25 he was in charge of. But Mr. Nordlicht was the person that, at

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1 least in terms of what I was doing on a day-to-day basis, which
2 was analyzing investment opportunities, Mr. Nordlicht was the
3 person that made final decisions on that.

4 Q. But you understood that Mr. Landesman had senior level
5 authority within the organization.

6 A. Correct.

7 Q. And if Mr. Landesman told you to do something, you would do
8 it.

9 A. Well, if it overlapped with investment stuff, then
10 Mr. Nordlicht would have to sign off on it also. But generally
11 speaking what Mr. Landesman would say carried weight.

12 Q. Thank you.

13 So you said you started to work with David Levy and
14 Dan Small. Were they portfolio managers?

15 A. Yes.

16 Q. And what does that mean within Platinum to be a portfolio
17 manager?

18 A. What it generally means is that you have responsibility to
19 source investment opportunities, to assess whether they --
20 there is an investment opportunity that's suitable for the
21 Platinum strategy, negotiate terms of a potential investment,
22 conduct due diligence on the potential investment, and
23 eventually present it to Mr. Nordlicht for a decision of
24 whether or not the investment should be made.

25 And then once the investment is made, then there is

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1 the maintenance of the investment following the actual
2 investment itself. And then eventually is the monetization of
3 that investment, whether it's a repayment of a loan or selling
4 equity in something. But that's generally what a portfolio
5 manager's responsibility would be.

6 Q. When is Mr. Nordlicht brought into the picture in that
7 process?

8 A. Fairly early. Portfolio managers generally don't want to
9 waste time conducting due diligence or negotiating terms of a
10 deal if Mr. Nordlicht will tell them that this is not for us or
11 I'm not going to approve this deal no matter what. So usually
12 he is looped in fairly early into a deal. But he wouldn't
13 generally get really heavily involved in it until it was being
14 presented by the portfolio manager as an actionable investment.

15 Q. What does it mean to source an investment?

16 A. So a fund could have a lot of money to invest, but it needs
17 to have investment opportunities in front of it to put that
18 money to use. So there is always a lot of deals in the market
19 that are looking for funding, and you need a -- sort of a -- I
20 guess, like hang your shingle up to tell the world that you are
21 opening for business and people should show you the
22 opportunities. So there's brokers, companies, conventions you
23 could go to to sort of get your name out there, that you are
24 there to provide capital for investments, and you have to find
25 your niche of what kind of investments you want to work for,

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1 and then people who are pitching investments for companies
2 would know to come to you.

3 Q. Is part of your value as a portfolio manager your ability
4 to hang a shingle, as you say?

5 A. That's part of it.

6 Q. When you hear about an investment, how do you evaluate it?
7 How do you determine whether it is something that you want to
8 pitch to Mr. Nordlicht?

9 A. Well, I guess the number one thing that, if I could recall
10 correctly, was most important for Platinum was what is the
11 return on the capital going to be with this investment? So,
12 you know, I guess there are investments that will have all
13 sorts of return profiles, right? You could invest in
14 treasuries and earn a 2 percent return or you could take, as
15 you move on -- up the risk scale, your returns will increase as
16 well. So the risk profile and the return profile needed to fit
17 what Platinum was trying to accomplish, which was earning a
18 high return on investments, which would be riskier than a
19 treasury yield, obviously, but structuring it in a way where a
20 lot of risk could be minimized or mitigated.

21 But the return profile was very important for
22 Mr. Nordlicht, and so there was that, that's the negotiation
23 part of it, of negotiating terms with the company, about what
24 you could get for your investment. And then obviously there is
25 the due diligence part of it, which is assuring that whatever

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1 you think you are going to get, whatever the portfolio manager
2 thinks they will get from the investment is actually feasible.

3 Q. And in making your presentation to Mr. Nordlicht, does that
4 put you in a position where you are having some back and forth
5 with him?

6 A. Certainly, yes.

7 Q. He is asking questions and you are responding to them?

8 A. Yes.

9 Q. And would he sometimes ask you to go back and do more
10 research and come back to him?

11 A. Very frequently, yes.

12 Q. And ultimately was it Mr. Nordlicht's call as to whether an
13 investment went forward or not?

14 A. Certainly seemed that way to me, yes.

15 Q. Did you ever get the impression that Mr. Nordlicht lacked
16 the authority to make those calls?

17 A. Never.

18 Q. Did you see Mr. Nordlicht make those calls in realtime?

19 A. Yes.

20 Q. He never said he had to go check with anybody?

21 A. Not that I could recall, no. He was very decisive, very
22 decisive leader.

23 Q. Did you have occasion in your years at Platinum to meet
24 Mr. Bodner?

25 A. Yes.

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1 Q. And in what capacity did you meet him?

2 A. So the way the -- at least when I first joined Platinum,
3 Platinum was in a building at 57th Street. They had two
4 floors. One was the fourth floor, where I worked, which was
5 also where Mr. Nordlicht sat and David Levy and Dan Small sat.
6 On the 54th floor was another floor where other employees sat,
7 and there was a daily afternoon prayer that took place on that
8 floor. And that's where I believe I met Mr. Bodner the first
9 time, but our conversation wasn't -- was more we had a similar
10 background, yeshiva education, and so we had a little bit of a
11 connection with each other, but it wasn't like an employee
12 capacity if that's what your question was.

13 Q. So did employees from the fourth floor sometimes go to the
14 54th floor for afternoon prayer?

15 A. Yes.

16 Q. Was that a fairly common thing?

17 A. The people on the fourth floor if they wanted to do
18 afternoon prayers would come to the 54th floor for afternoon
19 prayers.

20 Q. Did they also serve lunch on the 54th floor?

21 A. I don't know, but there was lunch on the fourth floor.

22 Q. Did you ever have occasion to seek Mr. Bodner's authority
23 for anything you were doing at Platinum?

24 A. Seek his authority? No.

25 Q. Did he ever tell you how to do your job?

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1 A. No. There were occasions where I may have asked advice
2 from him, but not -- he didn't -- I never took any direction
3 from him.

4 Q. Well, tell me about that. Why --

5 THE COURT: Well, counsel, I will allow that, but how
6 much longer do you have with this witness? I'm asking because
7 we want to give the jury their mid-morning break.

8 MR. HERTZBERG: We can take a break now Judge.

9 THE COURT: Well answer my question. How much longer
10 do you have on your direct?

11 MR. HERTZBERG: 35, 40 minutes.

12 THE COURT: All right. We will give the jury their
13 mid-morning break.

14 See you in 15 minutes.

15 You can step down. We will see you in 15 minutes.

16 (Continued on next page)

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1 (Jury and witness not present)

2 THE COURT: Please be seated.

3 So what is it that you intend to ask this witness
4 that's going to take 30 to 35 minutes?

5 MR. HERTZBERG: Your Honor, the witness was portfolio
6 manager for the years we touched on Black Elk, Desert Hawk,
7 implant, Pedevco, Golden Gate. I think your Honor is right
8 that I did just get to the punch line before the break, but
9 there is some additional material to cover. He attended meets
10 of the valuation committee. He had his knowledge of the
11 release. He has --

12 THE COURT: So let me just make sure I understand the
13 relevance. If the relevance is that the ultimate loss as far
14 as he is concerned was Mr. Nordlicht and Mr. Bodner played no
15 role that he observed, you have already pretty much brought
16 that up. If the relevance is to the accounting for any of
17 those entities, I don't see how he can speak to that. That's
18 why you had your previous witness.

19 So what is it that he is going to be adding.

20 MR. HERTZBERG: He worked on these positions, Judge.
21 He can -- the assertion by the plaintiffs, I mean, from where I
22 am sitting, it sounds like this is all a hoax, and this is a
23 guy who worked on these positions. He is a solid professional,
24 and he believed in what Platinum was doing.

25 THE COURT: So maybe I misunderstand plaintiffs'

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1 position, but I understood their position to be that the
2 accounting for these various entities was -- did not accurately
3 reflect their real value through various what plaintiffs would
4 view as accounting tricks and defense counsel would say, no,
5 they are perfectly legitimate accounting. But I don't see
6 how -- I don't recall them saying anything about there wasn't
7 oil in the ground or something like that.

8 MR. HERTZBERG: I think that very much is the
9 implication every time Mr. Gluck stands up and says that these
10 wells are pumping water, just by way of --

11 THE COURT: By the way, how would he know?

12 MR. GLUCK: I was about to say --

13 THE COURT: Excuse me. Did he go to visit these
14 wells?

15 MR. HERTZBERG: He did not visit and go to California,
16 but he was working with portfolio team, he rose to be the chief
17 risk officer and was working across the whole portfolio.

18 THE COURT: All right. I'm going to give you a
19 maximum of 15 minutes with him, and so see what you can do, and
20 you might want to talk to him and make sure that he doesn't
21 feel he will has to describe the history of the universe in
22 answer to every question.

23 MR. HERTZBERG: I will heed that direction. I do want
24 to flag for the Court that we don't have another witness after
25 Mr. Steinberg today and I don't know that we will get to that.

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1 THE COURT: Oh, no. You sure do. You have
2 Mr. Bodner, and he is going to be called if you don't have
3 another witness.

4 MR. GLUCK: May I --

5 THE COURT: We will see you in five minutes. No.

6 THE DEPUTY CLERK: Judge, the jurors have asked me to
7 ask you that whichever plaintiffs' counsel was doing the
8 examining in the last session should please be directed to
9 speak directly into a microphone. They couldn't hear a thing
10 he was saying.

11 THE COURT: That's been an ongoing problem.

12 MR. GLUCK: Sorry. I will pull it closer to me.

13 (Recess)

14 THE DEPUTY CLERK: All rise. May I bring in the jury?

15 THE COURT: Hold on one minute.

16 So I want to elaborate on two points.

17 First—please be seated—this is something that I
18 would have thought that at least Mr. Lauer would have
19 recognized, because it is trial lawyering 101, which is
20 "shorter is better." And the reason I am concerned about
21 length is because elaborate length can only lead to a confused
22 jury. My client is the jury.

23 Now, as I understand this witness's testimony, it
24 could be about five questions:

25 Who was your boss, ultimate boss? Mr. Nordlicht. We

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1 have already had that, but that took 15 minutes, not one
2 question.

3 Did you ever have any substantive -- did Mr. Bodner in
4 any way ever direct you substantively? No. Again, we
5 basically got that out already.

6 Did you work on these various projects, like
7 Black Elk? Yes.

8 And were you one of the primary people working on it?
9 Yes.

10 And did you have confidence that they were good
11 investments and you recommended them? Yes.

12 And eventually some problems arose with respect to X
13 and Y or Z? Yes.

14 And how to treat them financially in an accounting
15 wise was none of your responsibility, correct? Correct.

16 Isn't that what you want to bring out from this
17 witness?

18 MR. HERTZBERG: Certainly in part, your Honor, but
19 there are other areas.

20 THE COURT: Like?

21 MR. HERTZBERG: Like his presentations to the
22 valuation committee and his impression as a percipient witness
23 of what those meetings were like, like the -- his knowledge of
24 what was going on in the early part of 2016 with the efforts to
25 exit Huberfeld and Bodner and his knowledge of what was

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1 anticipated next.

2 THE COURT: Well, it sounds a lot of this may be
3 either hearsay or beyond the scope of lay witness impression,
4 which is quite limited under the federal rules, but we will
5 see.

6 All right. Let's bring in the witness, let's bring in
7 the jury.

8 (Continued on next page)

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1 (Jury present)

2 THE DEPUTY CLERK: Jury entering the courtroom.

3 THE COURT: The witness should come back up to the
4 stand, please.

5 Please be seated.

6 Counsel.

7 MR. HERTZBERG: Thank you, your Honor.

8 BY MR. HERTZBERG:

9 Q. Mr. Steinberg, right before the break, you were saying that
10 there was an occasion where you may have taken advice or sought
11 the vice of Mr. Bodner. Can you explain that to the jury, what
12 you meant by that?

13 A. Sure.

14 So I can only recall one instance of this occurring,
15 but it was the first time that I was making a pitch for an
16 investment that I would be responsible for separate from Dan
17 Small and David Levy, and it was the first time that I was
18 looking at an investment opportunity on my own without the help
19 of the senior portfolio managers with David Levy and Dan Small,
20 and so I just felt like I needed some general guidance,
21 business advice, somebody else to just take a look at what I
22 was seeing and see if there was any gaping holes in the
23 opportunity that I was looking at.

24 And so I probably spoke to more than one person, but I
25 asked David if he could -- Mr. Bodner if he could just listen

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1 to what I had to say and hear me out, and if there was anything
2 that he would advise me on, just as from a practical
3 perspective, my presentation.

4 (Continued on next page)

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1 BY MR. HERTZBERG:

2 THE COURT: Do I understand it that at no time during
3 your employment did you take direction from Mr. Bodner?

4 THE WITNESS: That's correct.

5 THE COURT: And do I understand that, as far as you
6 observed, it was Mr. Nordlicht who was the ultimate boss?

7 THE WITNESS: Absolutely, yes.

8 THE COURT: Counsel.

9 BY MR. HERTZBERG:

10 Q. What was the transaction in which you sought Mr. Bodner's
11 input?

12 A. It was a company called -- it was a potential investment
13 into a called Pedevco.

14 Q. When you asked Mr. Bodner if he would provide you some
15 advice, did you sit with him in his office?

16 A. I don't recall if it was in his office or in a conference
17 room or on the phone, maybe just on the phone. I don't recall.

18 Q. What was Pedevco, just so the jury understands what we're
19 talking about.

20 A. Pedevco was an oil and gas company. It still is, I think.
21 It may have changed its name, but it's an oil and gas company
22 that was doing oil and gas exploration, which means that they
23 would buy land, which -- I don't know how to describe it
24 properly. Basically, there is a way of determining if there's
25 actual oil in the ground underneath the ground that you're

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1 purchasing using engineering or different kind of testing or
2 and seismic and things like that. And it's like a prospect.
3 And there were developed wells in the area already that showed
4 a high level of confidence that additional drilling would
5 produce more wells. And that's what oil and gas exploration
6 company is.

7 Q. Was there an appraisal report associated with the Pedevco?

8 A. I don't think it was an appraisal. I think it was
9 something called the reserve report.

10 Q. Was the reserve report prepared by engineers?

11 A. I believe so, yes.

12 Q. Did you review it?

13 A. Yes.

14 Q. Did you have the expertise personally to understand the
15 reserve report?

16 A. Not at a deep level.

17 Q. Did you ask anybody to help you with that?

18 A. Yes, we hired another engineering company to audit that
19 reserve report.

20 Q. Did you ultimately present this to Mark Nordlicht as
21 something you thought that PPVA should invest in?

22 A. Yes.

23 Q. And when you presented it, was the reserve report factored
24 in as one of the important points as to why you thought it was
25 a good idea?

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1 A. Yes. For oil and gas companies, the reserve report is a
2 key component of the investment analysis.

3 Q. And that third-party consultant, they reviewed the reserve
4 report?

5 A. Correct, yes.

6 Q. Did you talk with them about it?

7 A. Yes.

8 Q. You got comfortable, I take it, that what they told you
9 about the reserve report, it supported the bona fides of
10 Pedevco?

11 A. Correct, yes.

12 Q. And you shared all of that with Mr. Nordlicht?

13 A. Yes.

14 Q. And what ultimately was the nature of the PPVA investment
15 with Pedevco?

16 A. So the investment was a loan made to the company. I don't
17 recall the exact terms of the loan, how soon it needed to be
18 repaid, or what the interest rate was, I don't recall that
19 right now. Besides the loan, there was also a significant
20 amount of stock in the company that Platinum received. I don't
21 remember the exact structure of how they received the stock, if
22 it was shares in the company or if it was a convertible
23 preferred share, but it was an equivalent of the stock in the
24 company, a large portion of the company stock.

25 Q. Were you the portfolio manager on that position?

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1 A. It was myself and Ezra baron.

2 Q. Did you understand that Platinum had to place a value on
3 the note and the equity?

4 A. I always understood that, but it wasn't something I was
5 involved in.

6 Q. But you understood that it had to be done?

7 A. Yes.

8 Q. Did you understand why it had to be done?

9 A. I think so, yes.

10 Q. Can you explain that very briefly.

11 A. I can tell you how I understand it. Whether it's true or
12 not, I can't tell you. But the way I understood it was that --

13 THE COURT: Well, let me ask you, you're not an
14 accountant?

15 THE WITNESS: No, I am not.

16 THE COURT: And you're not an expert on accounting
17 rules and accounting procedures, are you?

18 THE WITNESS: No, I am not.

19 Q. Did you have occasion to make a presentation to the
20 Platinum Management valuation committee?

21 A. I don't know if it was a presentation, but there were
22 occasions where the -- the term "valuation committee" that
23 we're talking about, I don't recall specifically, like a
24 valuation committee or members of a valuation committee at
25 Platinum or who those were, but there were frequent calls with

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1 Platinum's third-party valuers.

2 In the beginning, it was a company called Sterling, I
3 don't remember what the rest of the name was. Sterling then
4 eventually changed to Phelps, if that's correct. I don't
5 remember. There was a third-party valuation company that
6 Platinum hired to review the valuation that Platinum was
7 putting on different assets, and once a quarter or once a
8 month, I don't remember the frequency of it, sometimes they
9 would ask portfolio managers to join a call with the
10 third-party valuers to provide an update or answer any
11 questions they may have. So maybe once or twice I was asked to
12 join such a call. They would tell you dial in at 11 o'clock in
13 the morning and it's going to be your turn to talk about what
14 your -- the investments that you're seeing.

15 MR. GLUCK: Move to strike. The question was about
16 valuation committee meetings, not auditor valuator. Whole
17 answer.

18 THE COURT: I'm going to allow it, but I'll remind, of
19 course, counsel of the time limit.

20 Q. Were you ever instructed not to be truthful with the
21 third-party valuers?

22 A. Never.

23 Q. And if somebody had instructed you to be untruthful, what
24 would your reaction have been?

25 MR. GLUCK: Objection.

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1 THE COURT: It never happened, so it's a hypothetical.
2 Sustained.

3 Q. Were you, in fact, truthful with these valuator?

4 A. I believe so.

5 Q. You believe so or you're certain that you were?

6 A. I'm certain that I was, yes.

7 Q. Because you wouldn't have been untruthful; right?

8 A. Correct.

9 MR. GLUCK: Objection.

10 Q. You had occasion as a junior portfolio manager, I guess, to
11 work with Dan Small and David Levy on some of the positions
12 that they were managing; right?

13 A. Correct.

14 Q. Was one of those Black Elk?

15 A. Yes.

16 Q. And in your time working with Dan Small and David Levy,
17 what was your function?

18 A. It was mostly dealing with ministerial kind of tasks. At
19 that time, Black Elk was trying to raise money from the capital
20 market, so there was a lot of forms that needed to be filled
21 out and spreadsheets that to be shown and presentations.

22 Mostly ministerial stuff. I wasn't involved in negotiation
23 between the different parties related to that capital raise,
24 but I had some superficial knowledge of the investment.

25 Q. Is there anything that you saw in your time working with

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1 Mr. Small or Mr. Levy that undermined your confidence in the
2 position?

3 A. No, at that point, Black Elk was one of the more exciting
4 prospects that were spoken about at the fund.

5 Q. And you also performed a similar function with respect to
6 Desert Hawk; is that right?

7 A. Desert Hawk was less involvement. There wasn't much taking
8 place. The company was -- if I recall correctly, the company
9 was waiting for a mining permit at that point, so there wasn't
10 really much going on until they got those mining permits. It
11 was a gold mine company. So I don't recall there being much
12 activity, but it was one of the investments that Dan and David
13 were in charge of.

14 Q. Did you see anything with any of the positions that you
15 were working with Levy and Small on, did you see anything that
16 undermined your confidence in what they were doing?

17 A. No.

18 Q. You never saw any kind of wrongdoing of any kind?

19 A. No.

20 MR. GLUCK: Objection.

21 THE COURT: Overruled.

22 Q. Let me bring you to early 2016. So on the latter part of
23 your tenure at Platinum, did you come to learn that Platinum
24 was having liquidity concerns?

25 A. I believe so, yes.

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1 MR. GLUCK: Objection. Foundation.

2 THE COURT: Overruled.

3 Q. Did you have occasion to work with someone named Seth
4 Gerszberg on something related to that?

5 A. Said to the liquidity issues?

6 Q. Yeah.

7 A. Briefly, probably, yes.

8 Q. Can you help us understand what it is that you and
9 Mr. Gerszberg were trying to accomplish?

10 THE COURT: I'm unclear from the witness's previous
11 answers. You said that you briefly, probably had occasion to
12 work with him on something related to liquidity issues, et
13 cetera?

14 THE WITNESS: Yes.

15 THE COURT: So do you have a memory of it?

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 THE WITNESS: Sorry for not being clear.

19 Q. So what do you recall about what you were hoping to
20 accomplish when working with Mr. Gerszberg in the latter part
21 of '15 or the early part of '16?

22 A. I believe it was early 2016, maybe it was February, that
23 timeframe, February, March, maybe January even. But the fund
24 was going through an issue where I guess monetization events
25 that were anticipated to occur were being delayed and there was

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1 an issue with liquidity in terms of being able to fund the
2 portfolio in a manner that would help it to continue to allow
3 it to thrive. So we were looking for ways to try to structure
4 an investment that could be attractive to an investor to invest
5 a significant amount of capital into Platinum.

6 What Mr. Gerszberg, who wasn't an employee of
7 Platinum, his company was a borrower of Platinum and he had a
8 creative, sort of out-of-the-box way of looking at things. He
9 was trying to help Mr. Nordlicht figure out how to present what
10 the fund has in a way that could be easy and simple for an
11 investor to understand and perhaps entice an investor to bring
12 capital into the fund to help it gap this liquidity issue that
13 the fund had.

14 Q. Did you come to learn at that time that Mr. Nordlicht
15 wanted Mr. Bodner and Mr. Huberfeld to exit the management
16 company?

17 A. I think it was a little bit later than that, maybe more
18 towards the springtime, but I did eventually learn about that,
19 yes.

20 Q. What did you come to learn?

21 A. That Mr. Nordlicht was trying to raise capital, but he
22 called the management share class, and that in order for those
23 investors to join the management company, he would need
24 existing partners to leave the management company so that there
25 could be space for this new investor.

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1 Q. And you mean a new investor in the fund?

2 A. In the fund, yes.

3 Q. In PPVA?

4 A. I believe that's what it was.

5 MR. GLUCK: Objection. Leading.

6 THE COURT: I'll allow that. I'm a little unclear
7 what you're saying here.

8 You understood, did you not, that the fund was in
9 serious financial difficulty, yes?

10 THE WITNESS: The question he asked was about
11 liquidity.

12 THE COURT: Excuse me?

13 THE WITNESS: The question that he asked was about
14 liquidity.

15 THE COURT: All right.

16 THE WITNESS: There was --

17 THE COURT: So you understood that there was a serious
18 liquidity problems?

19 THE WITNESS: Correct.

20 THE COURT: By liquidity, what do you mean?

21 THE WITNESS: That there was not enough cash to
22 support -- to continue supporting the investments that were in
23 the portfolio.

24 THE COURT: So the fund might have to go out of
25 business unless steps were taken to rectify this?

MC9Cpla3

Steinberg - Direct

1 THE WITNESS: Correct.

2 THE COURT: So this fellow Gerszberg comes up with a
3 proposal and presents it, but as I think you said that, later
4 on, Mr. Nordlicht came up with the idea of asking the people
5 who were the effective owners of the management company to give
6 up their role so that he could attract some other investors by
7 sweening the pond. Do I have that right?

8 THE WITNESS: Yeah. I think the episode Mr. Gerszberg
9 is separate from this management share class that the Judge was
10 talking about.

11 THE COURT: Okay. So just focusing on Mr. Nordlicht,
12 as you understood it, Mr. Nordlicht's proposal, how did you
13 know about all that?

14 THE WITNESS: I definitely learned about it from
15 Suzanne Horowitz, who, at that point, was -- I don't know
16 exactly what her title was, but she was like an in-house lawyer
17 at Platinum who was working on documentation for this
18 investment because there seemed to be some --

19 THE COURT: You were not personally involved in
20 formulating this proposal?

21 THE WITNESS: Correct. The management shareholders.

22 THE COURT: Sounds to me like hearsay, counsel.

23 BY MR. HERTZBERG:

24 Q. Did you have specific discussions, Mr. Steinberg, with
25 Susan Horowitz about this --

MC9Cpla3

Steinberg - Direct

1 THE COURT: Still hearsay.

2 Q. Did you have discussions with Mr. Gerszberg about the
3 proposal to use the management share class to attract --

4 THE COURT: Still hearsay.

5 MR. HERTZBERG: Could we pull up Exhibit PX 592,
6 please.

7 Q. Is this an email that was sent by you, Mr. Steinberg?

8 A. It stays that it was.

9 Q. Who's Naftali Manela, who this email is --

10 MR. HERTZBERG: I'm sorry. This is in evidence. The
11 jury can see it.

12 Q. Who is Naftali Manela?

13 A. I believe his title was the CFO of Platinum.

14 Q. Did he have a different job than Joe SanFilippo?

15 A. Yes. Now maybe his title was chief operating officer at
16 the time.

17 Q. What were you communicating to Mr. Manela in this email?

18 A. I'm just going to read it for a second.

19 THE COURT: So, you say in the second paragraph,
20 without the extra money from Apollo or BAM. Who was BAM?

21 THE WITNESS: BAM is Beechwood Asset Management.

22 THE COURT: The fund will need to gate. What did you
23 mean by gate?

24 THE WITNESS: Gate is the general term in the hedge
25 fund industry referring to telling investors that redemptions

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Steinberg - Direct

1 will not be paid.

2 THE COURT: Then you say Ari Glass and NM, who is NM?

3 THE WITNESS: I'm probably referring to an investment
4 firm called New Milton. My recollection of this email, I think
5 it's primarily based on the fact that I was asked these
6 questions at my deposition. I don't remember --

7 THE COURT: No, I don't care about your deposition and
8 I just want you to listen to my questions and answer just my
9 questions.

10 THE WITNESS: I apologize, sir.

11 THE COURT: Do you recollect what you meant when you
12 said NM?

13 THE WITNESS: Yeah, New Milton.

14 THE COURT: It goes on, we lose probably lose to
15 \$400 million of value due to unfunded position. I'm sorry. I
16 skipped over. After eventually, BAM will have to join, put the
17 fund into BK. That was bankruptcy; right?

18 THE WITNESS: Yes.

19 THE COURT: We lose probably lose to 400 million of
20 value due to unfunded positions and a trustee is appointed to
21 run the wind-down with no rachmanus on BAM.

22 In other words, this was a very serious crisis, yes?

23 THE WITNESS: Yes.

24 THE COURT: So when you say this is the narrative for
25 Murray, who is Murray?

MC9Cpla3

Steinberg - Direct

1 THE WITNESS: I presume I was referring to Murray
2 Huberfeld.

3 THE COURT: I'm sorry?

4 THE WITNESS: Murray Huberfeld.

5 THE COURT: And Beechwood.

6 So why were you singling out Mr. Huberfeld in that
7 last sentence?

8 THE WITNESS: If I could recall correctly, Naftali was
9 going to be speaking with Murray and also Beechwood about
10 potentially making an investment into Platinum in this
11 timeframe of January to help relieve this liquidity issue.

12 THE COURT: All right. Counsel.

13 BY MR. HERTZBERG:

14 Q. You write here, without the extra money from Apollo or BAM.
15 What did you mean by that when you referred to Apollo?

16 A. There was -- Apollo is an investment firm and there was
17 discussions or negotiations that are taking place. I wasn't
18 involved in them, but one of the other employees, Haim Salfati,
19 was leading an effort to have Apollo -- I don't recall the
20 structure, if it was going to be an equity or an investment or
21 a loan to Platinum to shore up this liquidity gap that Platinum
22 had.

23 MR. GLUCK: Objection. Move to strike. He said he
24 had no involvement of it. It's all hearsay.

25 THE COURT: I think part of the answer is responsive.

MC9Cpla3

Steinberg - Direct

1 I'm going to let it stand. I would, again, ask the witness be
2 sure to confine yourself just to the question.

3 So the question that was put to you was, what did you
4 mean by Apollo. Apollo is a great big fund that you thought or
5 people thought maybe would be interested in helping bail out
6 Platinum, yes?

7 THE WITNESS: Correct. But I had --

8 THE COURT: I think that was a yes or no question.

9 Go ahead, counsel.

10 BY MR. HERTZBERG:

11 Q. You wrote Apollo or BAM. What were you saying with respect
12 to BAM there?

13 A. I think that that was -- what I was referring to in that
14 last line of that email when Naftali was speaking to Beechwood,
15 Beechwood and BAM are interchangeable, at least my
16 understanding, and Naftali was going to try to get Beechwood or
17 BAM to also participate in this investment.

18 Q. And there are some schedules attached to this.

19 MR. HERTZBERG: If Mr. Robson would turn to the one
20 headed PPVA position breakout.

21 Q. Is this the schedule that you prepared, Mr. Steinberg?

22 A. Standing here today, I don't have a recollection of
23 actually preparing this schedule, but I'm pretty sure at my
24 deposition, at that point, I testified that this is the
25 schedule and I did put it together.

MC9Cpla3

Steinberg - Direct

1 Q. It was a schedule attached to your email to Mr. Manela;
2 right?

3 THE COURT: Just so you understand, your deposition is
4 not part of this case, so you don't have to worry about what
5 you said at your deposition. If it becomes relevant, someone
6 will --

7 THE WITNESS: Okay.

8 THE COURT: All we want to know is what you know
9 today.

10 So do I understand it, that although you don't have a
11 specific recollection of preparing this, you think it's likely
12 that you did?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 Q. Do you have a recollection of where you got the data from
16 for this spreadsheet?

17 A. No.

18 MR. HERTZBERG: Mr. Robson, if you could zoom out a
19 little bit.

20 THE WITNESS: I don't have a specific recollection,
21 no.

22 Q. When you have those two columns encumbered and
23 unencumbered, do you see that?

24 A. Yes.

25 Q. Were you equating encumbered with liability?

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Steinberg - Direct

1 A. I don't believe so. Given the numbers here, I don't
2 believe so.

3 Q. Do you have an understanding of whether encumbered and
4 liability are not the same thing?

5 A. They're not the same thing.

6 Q. Why not?

7 A. Encumbered means that there's just a lien or an encumbrance
8 on an asset, it doesn't necessarily mean the amount of the
9 encumbrance. So liability would be a specific amount that
10 encumbers the lien, encumbers the asset. But encumbered just
11 means that there's a party that has a claim for their
12 investment or their loan on that asset.

13 Q. And on the bottom line where it says total assets, 1048.
14 Is that \$1,000,480,000?

15 A. I believe so, yes.

16 MR. HERTZBERG: You can take that away, Mr. Robson.

17 Q. And where it says unencumbered, 333.2, is that
18 \$333.2 million?

19 A. Yes.

20 Q. You were not suggesting in this document that the NAV of
21 PPVA was \$333.2 million?

22 MR. GLUCK: Objection.

23 THE COURT: Sustained. Leading, in the extreme.

24 Q. What were you attempting to indicate with the
25 \$333.2 million?

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Steinberg - Direct

1 A. That there was \$333 million worth of investments which did
2 not have anybody else having a lien on them.

3 Q. So a potential investor or lender would see \$333.2 million,
4 that lender or investor could have first position with respect
5 to that \$333.2 million?

6 MR. GLUCK: Objection.

7 THE COURT: Sustained.

8 Q. How would a prospective lender or investor view the --

9 MR. GLUCK: Objection.

10 THE COURT: Sustained.

11 Q. Why does a lender or investor care whether an asset is
12 encumbered or unencumbered?

13 MR. GLUCK: Objection. He's not an expert.

14 THE COURT: Are you a lender?

15 THE WITNESS: At Platinum, we were making loans, yes.

16 THE COURT: And are you an investor?

17 THE WITNESS: That was both, we were making
18 investments --

19 THE COURT: Were you a lender or investor with respect
20 to any of the Platinum companies?

21 THE WITNESS: As in me loaning money to Platinum?

22 THE COURT: Were you lending money to Platinum?

23 THE WITNESS: I was not lending money to Platinum.

24 THE COURT: Were you investing in Platinum?

25 THE WITNESS: No.

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Steinberg - Direct

1 THE COURT: Sustained.

2 BY MR. HERTZBERG:

3 Q. Did you have occasion to communicate with lenders and
4 investors with respect to Platinum assets?

5 MR. GLUCK: Objection.

6 THE COURT: You're going to hit hearsay all over
7 again.

8 Q. Changing gears, who was Bernard Fuchs?

9 MR. HERTZBERG: You can take this down.

10 A. I believe he was an investor and also a partner in the
11 management company at Platinum.

12 Q. Did you see Mr. Fuchs in the office?

13 A. Yes, frequently.

14 Q. I'm sorry. At the time that you drafted the document that
15 we were just looking at, what was your title at that time?

16 A. I think it was co-chief risk officer.

17 Q. You were no longer a portfolio manager; correct?

18 A. Correct.

19 Q. You were the chief risk officer; right?

20 A. Co-chief risk officer.

21 Q. Back to Mr. Fuchs.

22 Did you have occasion to see Mr. Fuchs sitting with
23 Mark Nordlicht?

24 A. Yes.

25 Q. Did you have occasion to talk with Mr. Fuchs about the

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Steinberg - Direct

1 positions of the funds?

2 A. Yes.

3 Q. Did you, as a result of those interactions, have an
4 impression that Mr. Fuchs was knowledgeable about the positions
5 of the funds?

6 A. Yes.

7 Q. Did Mr. Fuchs have a role in marketing?

8 MR. GLUCK: Objection. Witness said he had no role in
9 marketing.

10 THE COURT: I'm not sure that's what he said. So
11 let's ask it again.

12 To your observation, did Mr. Fuchs have a role in
13 marketing?

14 THE WITNESS: Yes.

15 THE COURT: What was his role?

16 THE WITNESS: He had a group of people at the fund who
17 were tasked with raising money from the Asian markets.

18 BY MR. HERTZBERG:

19 Q. Did you have occasion to witness him working with any of
20 the people in that group?

21 A. Yes.

22 Q. Did he have a leadership role in that group?

23 A. They seemed to answer to him.

24 Q. Did you see or hear him interacting with that group in a
25 way that led you to believe that he understood the value of the

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Steinberg - Direct

1 positions of PPVA?

2 A. In order to present investments to an investor, it's
3 inherent they're understanding what you're presenting, which
4 would mean understanding the investments.

5 MR. GLUCK: Objection. I think it was a yes or no
6 question.

7 THE COURT: Sustained. The jury will disregard.

8 Q. You mentioned Suzanne Horowitz. Who's she?

9 A. She was an in-house attorney at Platinum.

10 Q. Did you have occasion to work with her directly?

11 A. Yes.

12 Q. In what kinds of matters?

13 A. There would be matters that related to investments at the
14 fund and also matters that would relate to transactions between
15 the fund and other parties.

16 Q. Did you have an impression that she was a good attorney?

17 A. Yes.

18 MR. GLUCK: Objection.

19 THE COURT: Sustained.

20 Q. Did you have the impression that she did her work in good
21 faith?

22 MR. GLUCK: Objection.

23 THE COURT: Sustained.

24 Q. What was your impression of Mrs. Horowitz?

25 THE COURT: Sustained. Any question beginning "Did

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Steinberg - Direct

1 you have the impression," that will be ruled objection.

2 Q. Who was Harvey Wreblowsky?

3 A. He was an attorney and also a portfolio manager at
4 Platinum.

5 Q. Did you have occasion to work with Mr. Wreblowsky?

6 A. Yes.

7 Q. On what kinds of matters?

8 A. Specifically, there was a workout in 2011, I believe, that
9 I worked closely with Mr. Wreblowsky in recovery of that
10 investment.

11 Q. Over how long a period of time?

12 A. Probably two years, like 2010 to 2012, maybe.

13 Q. Mr. Wreblowsky was working in his capacity as an in-house
14 lawyer with you when were you working on matter?

15 A. Yes.

16 MR. GLUCK: Relevance.

17 THE COURT: Sustained. Counsel, come to the sidebar.

18 (Continued on next page)

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Steinberg - Direct

1 (At the sidebar)

2 THE COURT: So, I had asked counsel to limit himself
3 to 15 minutes, but since I have the greatest respect for all
4 counsel in this case, I decided not to interrupt. It has now
5 been almost 35 minutes. You began your examination after the
6 break at 11:33 and it's now 12:07. So, I think at this point
7 I'm going to give you one more question.

8 MR. HERTZBERG: Judge, may I explain the relevance of
9 Mr. Wreblowsky. I think the objection was just sustained.

10 THE COURT: You can explain that, but I hope in the
11 future, I'm really very, very disappointed that greater
12 adherence was not given to my direction. But, yes, what's the
13 relevance?

14 MR. HERTZBERG: I do appreciate the extra minutes,
15 Judge.

16 Mr. Wreblowsky and Mr. Horowitz were the two lawyers
17 who worked on the release, and there is documentation to that
18 effect, and I wanted the jury to have that understanding that
19 they're going to hear about those people and I wanted them to
20 know that these are, in fact, human beings who worked at the
21 fund and were solid lawyers.

22 THE COURT: I'm not sure what the relevance is. This
23 is not a case in which you've raised an advice of counsel
24 defense. So what's the relevance?

25 MR. HERTZBERG: They were acting for Platinum

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Steinberg - Direct

1 Management on one side of the table from Mr. Bodner and
2 Mr. Huberfeld and the transaction where Mr. Bodner and
3 Mr. Huberfeld were exiting. There have even been questions --

4 THE COURT: I don't believe that's in evidence yet and
5 I don't think this witness has personal knowledge of that, does
6 he?

7 MR. HERTZBERG: I just wanted the witness to
8 articulate for jury who Ms. Horowitz and Mr. Wreblowsky were.

9 THE COURT: I thought he's already answered, but I'll
10 let you put one more question about Mr. Wreblowsky.

11 (Continued on next page)
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MC9Cpla3

Steinberg - Cross

1 (In open court)

2 BY MR. HERTZBERG:

3 Q. Mr. Steinberg, in your work with Mr. Wreblowsky, when
4 Mr. Wreblowsky was working in his capacity as an in-house
5 lawyer, did the two of you work together on complex and
6 involved matters?

7 A. Yes.

8 MR. HERTZBERG: We pass the witness.

9 THE COURT: Cross examination.

10 CROSS-EXAMINATION

11 BY MR. GLUCK:

12 Q. Mr. Steinberg, good afternoon.

13 You joined Platinum as an intern right after you got
14 your MBA?

15 A. It was a few months after I graduated, yes.

16 Q. And since that time, you haven't worked anywhere else,
17 except for what you've mentioned, the SEC receiver and the
18 other feeder fund liquidator?

19 A. I currently invest in real estate.

20 Q. And you currently invest in real estate. So you have no
21 experience at any other hedge funds?

22 A. Correct.

23 Q. You never worked on Black Elk after 2012, did you?

24 A. I don't believe so.

25 Q. You have no familiarity with Northstar, did you?

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Steinberg - Cross

1 A. I knew that it existed. I think I was at the office one
2 time, but I was not involved day-to-day in the investment.

3 Q. You worked for Dan Small and David Levy?

4 A. For a period of time, yes.

5 Q. Were they both convicted of fraud?

6 A. I'm not familiar what they're convicted of.

7 Q. You don't know?

8 A. I know they're convicted of, but I don't know what their
9 counts were.

10 Q. You relayed your understanding of what happened at Platinum
11 to the SEC receiver?

12 MR. HERTZBERG: 401.

13 THE COURT: Well, that's a yes or no question, so I
14 will allow the answer to that question and we'll see where we
15 go.

16 A. Can you repeat the question.

17 Q. You relayed your understanding of what happened at Platinum
18 to the SEC receiver?

19 MR. HERTZBERG: What happened at Platinum over seven
20 years?

21 THE COURT: Did you have communication with the SEC
22 receiver?

23 THE WITNESS: Sure.

24 THE COURT: And was that oral or written or both?

25 THE WITNESS: Both.

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Steinberg - Cross

1 THE COURT: Did the receiver put questions to you that
2 you responded to?

3 THE WITNESS: Sure.

4 THE COURT: Go ahead, counsel.

5 BY MR. GLUCK:

6 Q. Did you assist in the SEC receiver's fraud case against
7 Beechwood?

8 A. The answer is I don't know. The information that she or --
9 first was Mr. Schwartz then Mrs. Janczewski as the receivers.
10 The information that they requested from me, I wouldn't know if
11 they were using that information or not, ultimately, in their
12 litigation.

13 Q. But you do know that former Judge Janczewski sued Beechwood
14 for fraud after listening to what you had to say?

15 A. No.

16 MR. HERTZBERG: 403.

17 THE COURT: Sustained.

18 Q. Do you know whether the feeder fund liquidators obtained a
19 judgment against various Platinum Partners for fraud based on
20 your work there?

21 A. No.

22 MR. HERTZBERG: 401, 403.

23 THE COURT: It's also probably hearsay, but I'm
24 sustaining on all three grounds.

25 Q. You state that your principal interactions with Mr. Bodner

MC9Cpla3

Steinberg - Cross

1 were in connection with afternoon prayer?

2 A. I'm sure there are other conversations that we've had,
3 socially, beyond just afternoon prayer.

4 Q. What about concerning Platinum Investments?

5 A. Certainly wasn't our primary social interaction.

6 Q. So we're going to introduce Platinum Exhibit 950.

7 THE COURT: It's always helpful to have an exhibit
8 that's in 6-point font or smaller.

9 MR. GLUCK: I think we were thinking about the screen
10 as opposed to paper, but my apologies.

11 Q. Are all of these meetings social?

12 A. I don't know what this is.

13 MR. HERTZBERG: Objection.

14 Q. Did you have a meeting with David Steinberg -- would you
15 have a meeting with David Bodner on June 6th, 2012?

16 A. I have no recollection.

17 Q. Any reason to doubt that you did?

18 A. It says here -- I guess this is what you're saying this
19 paper says, then --

20 MR. HERTZBERG: That's exactly the problem, Judge.

21 A. I don't know what this paper is.

22 THE COURT: Sustained.

23 Q. Did you use Microsoft Outlook at Platinum?

24 A. Sure. Yes.

25 Q. Would it be the practice to send calendar invites if you

MC9Cpla3

Steinberg - Cross

1 needed to do a meeting?

2 A. Yes.

3 Q. And any reason why these calendar invites would be
4 incorrect?

5 MR. HERTZBERG: Objection. There are no calendar
6 invites in front of the witness right now.

7 MR. GLUCK: There are calendar --

8 THE COURT: Sustained. This is not a
9 self-authenticating document and I doubt very much that it can
10 be authenticated through this witness. So if you want to get
11 this in, you're going to have to call someone else.

12 MR. GLUCK: That's fine.

13 Q. When you wrote that rachmanus email, were you looking for
14 other work at the time?

15 A. I believe so, yes.

16 Q. Why was that?

17 A. Because Platinum was struggling with liquidity and there
18 was certainly possibility that they wouldn't be able to raise
19 the money that they needed and that they couldn't make
20 additional investments into new opportunities, which is what
21 portfolio managers get paid for.

22 Q. Do you use the word "inmates running the asylum," or the
23 phrase, when you previously described your job?

24 A. I don't recall.

25 Q. You don't recall.

MC9Cpla3

Bodner - Direct

1 MR. GLUCK: No more questions.

2 THE COURT: Anything else?

3 MR. HERTZBERG: No redirect.

4 THE COURT: Thank you very much. You may step down.

5 (Witness excused)

6 Please call your next witness.

7 MR. LAUER: We'll call David Bodner.

8 DAVID BODNER,

9 called as a witness by the Defendant,

10 having been duly sworn, testified as follows:

11 THE DEPUTY CLERK: Please be seated, draw close to the
12 microphone, state your name and spell it slowly for the record.

13 THE WITNESS: My name is David Bodner, D-a-v-i-d
14 B-o-d-n-e-r.

15 DIRECT EXAMINATION

16 BY MR. LAUER:

17 Q. Good morning, Mr. Bodner. How are you?

18 A. I'm well. Thank you very much.

19 Q. Tell us about yourself. Where did you grow up?

20 A. I grew up in Brooklyn, New York until I got married --

21 Q. Let's take it one step at a time. How old are you?

22 A. I am 66 years old.

23 Q. Would you describe your education.

24 A. My education was mostly Yeshiva education. I went to
25 elementary school. After that, I was followed by high school.

MC9Cpla3

Bodner - Direct

1 I graduated high school and I went to Brooklyn College for a
2 very short period of time. I received 22 credits. After that,
3 I concluded with my Talmudic studies.

4 Q. So when you say you went to Yeshiva, does that also have
5 secular programs, as well?

6 A. Yes.

7 Q. And you left. About what year did you leave Brooklyn
8 College to return to Yeshiva?

9 A. I left Brooklyn College when I was around -- I graduated
10 early high school at about 16 years old, and then I went for a
11 very short period of time to Brooklyn College, that would take
12 me to about 17 years old. Even when I was in Brooklyn College,
13 it was a night program, I wasn't there by day. By day, I
14 studied. It was just at night, I used to go to Brooklyn
15 College.

16 Q. You mean during the day, you were studying Talmud in
17 Yeshiva?

18 A. Yes.

19 Q. And you went to Brooklyn College at night?

20 A. Yes.

21 Q. For everyone's benefit, can you try to fix a year or two
22 about when --

23 THE COURT: When is your birthday?

24 THE WITNESS: My birthday is 10/11/56.

25 THE COURT: So you would have been 16 in 1972 or

MC9Cpla3

Bodner - Direct

1 thereabouts; right?

2 THE WITNESS: Correct.

3 THE COURT: I didn't even take the law school course
4 in arithmetic. So go ahead.

5 Q. When you stopped attending Brooklyn College and went to
6 full-time at Yeshiva, for how many years did you study Talmud
7 full-time in the Yeshiva?

8 A. Well, I studied full-time till my wedding, which was when I
9 was 21 years old, which would give me four years of full-time
10 studying. Then, after I got married, I went and studied for
11 years after my wedding. People who are married go to this
12 place to study to become rabbis, so I did that for five years.

13 Q. And during the time that you were studying, were you
14 working?

15 A. No, at that time, I was not working.

16 Q. And you were married and you were not working, how did you
17 support yourself?

18 A. My wife was working.

19 Q. What did she do?

20 A. She was a teacher at a school in Brooklyn.

21 Q. Do you and your wife have any children?

22 A. Yes. Thank God, we have eight children.

23 Q. Are they married?

24 A. All of them are married.

25 Q. Do you have grandchildren?

MC9Cpla3

Bodner - Direct

1 A. Yes, thank God.

2 Q. Did there come a time that you entered out in the world of
3 business?

4 A. Yes.

5 Q. Around what calendar year would you say that you left
6 full-time study and started to make a living for yourself and
7 your family?

8 A. I would say I was around 27 years old. So it should be
9 around 1983.

10 Q. And what did you do?

11 A. I was a trader. I used to sell premium on options. At
12 that time, there was an index called the OEX, which monitored
13 the stock market going up and down. It was a basket of stocks
14 that were put into this OEX, and if the market would move up,
15 usually this basket would move up with it. So when the OEX
16 would move up, the index would move up. If this market would
17 go down, the index would go down. It was usually with the Dow
18 Jones. On this index, you were able to sell options. I was a
19 premium seller. If I saw that the index had a very heavy
20 premium, the index would expire every month, once a month. In
21 those times -- today, if I'm not mistaken, it's every day they
22 have options. In those times, it was once a month was
23 expiration. So I would sell premiums, and at the beginning of
24 the month, I would sell the premium that I was able to take in
25 for that month and I would hold it as the premium -- premium is

MC9Cpla3

Bodner - Direct

1 based on twofold. If the index moves up, the call moves up, if
2 the index moves down, la put. La put is something that's put
3 to you if something goes against you. So that would move up.
4 So at this period of time the month, the four weeks they gave
5 you for the index, I would put in a call, take in a fat premium
6 - that they used to call, that was the language they used - and
7 as days -- premium was also based on time. If you have 28 days
8 and it is at the same price, three or four days later, your
9 premium is going to be less. So you're going to make profit on
10 it. So that's what I used to do, trading, I used to trade.

11 Q. I think we're going to need more time to understand how to
12 do that.

13 MR. GLUCK: Move to strike. Relevance.

14 THE COURT: It's not irrelevant, but I agree with you,
15 with defense counsel, we probably should move on.

16 Q. So for how long did you do this?

17 A. If I'm not mistaken, I did it for either three or four
18 years.

19 Q. Did you then go into some other type of business?

20 A. You see, I think --

21 Q. Or did you trade in a different context?

22 A. I was doing it at a time after I was doing it for myself, I
23 started doing it for a wealthy individual who we did it
24 together with. He would pay my salary.

25 Q. How long did you do that?

MC9Cpla3

Bodner - Direct

1 A. I think that lasted about three, four years.

2 Q. Did there come a time when you met Murray Huberfeld?

3 A. Yes.

4 Q. How did you come to meet Murray Huberfeld?

5 A. Murray Huberfeld had a string of restaurants called Kosher
6 Delight. It's like a fast food McDonald's and he wanted to
7 take them public. And he came to ask advice of somebody I was
8 a partner with then. Together, we all met and we told him
9 that, you know, he usually -- when it comes to taking something
10 public, you get a much better valuation when you take it public
11 and you build it. Usually, Wall Street gives you a very good
12 evaluation so you can make much more money by opening up a
13 string of restaurants, plus you're able to raise money on Wall
14 Street. If you own two, three restaurants, all you get is the
15 earnings that restaurants give you. If you take it public,
16 since you're raising money, you can raise millions of dollars
17 with plans to open up 50 or 60. This was the kosher
18 McDonald's, so there was a need for this Kosher Delight in
19 every Jewish community. People like the food very much.

20 Q. So what then next did you end up doing a public offering
21 for Mr. Huberfeld's company?

22 A. No, it never work out.

23 Q. Did you come to form some type of arrangement or
24 relationship with Mr. Huberfeld?

25 A. Yes, I did.

MC9Cpla3

Bodner - Direct

1 Q. And what was the nature of that relationship?

2 A. We were going to be partners, 50/50 on anything that we do.
3 He even gave me a partnership in one of his three restaurants.

4 Q. So about what time did you and Mr. Huberfeld form a
5 business partnership?

6 A. I'm thinking around 1990.

7 Q. Between let's say the beginning of your partnership in 1990
8 and the early 2000s when you started the Platinum fund
9 organization, so for that 10 or 12 years, could you describe
10 what types of business you and Mr. Huberfeld were engaged in?

11 A. At first, maybe it was two or three years, Mr. Huberfeld
12 used to come out to Upstate New York where I live, in Monsey,
13 New York. And I was a trader and he used to sit with me, watch
14 me trade, and also we spoke about different ideas.

15 And I remember then, somebody gave us an idea about a
16 company called Geotech. It was a private company, it was not
17 far from Monsey. I think it was in Ramsey, New Jersey. And we
18 decided together to become an investor in this company. And
19 with God's help, it worked out very, very nicely for us. We
20 owned a very nice percent of the company and it was some sort
21 of a technology company, not that any of us knew what was going
22 on there, but we invested in it, we owned the ownership, and it
23 came to make us a sizeable amount of money.

24 Q. And in addition to Geotech, without too much elaboration, I
25 can follow up, could you basically give us a survey of the

MC9Cpla3

Bodner - Direct

1 kinds of business deals and investments that you and
2 Mr. Huberfeld did over the '90s and into the early 2000s?

3 THE COURT: Can someone bring the witness a bottle of
4 water.

5 MR. GLUCK: Objection. Is there a relevance?

6 THE WITNESS: To the water? No.

7 MR. GLUCK: What is the relevance?

8 THE WITNESS: I apologize.

9 Q. Are you okay?

10 A. Yeah, I was just getting dry.

11 Q. So my question was for you to describe, without too much
12 detail, the kinds of trading and investing that you and
13 Mr. Huberfeld did between when you started your partnership in
14 1990 and around 2003 when Platinum was formed.

15 MR. GLUCK: Objection.

16 THE COURT: The objection is overruled. You may
17 answer.

18 A. We invested in all different types of private companies and
19 public companies the same way we started with Geotech. Geotech
20 gave us the capital to do that. After that, we invested in
21 some different real estate investments. We did some charity
22 work together and all different types of charity work. We
23 spent our time a lot. If I remember correctly, we moved from
24 Monsey. We used to come to my house and it might have been in
25 '96, we took offices at Carnegie Hall Towers. So we were able

MC9Cpla3

Bodner - Direct

1 to have, you know, more professional meetings. We were on the
2 54th floor and we took offices and we met with all different
3 types of investments. And, also, we met with all different
4 types of charities. That's where we spent our time usually.

5 (Continued on next page)

Mc92Pla4

Bodner - Direct

1 BY MR. LAUER:

2 Q. So like what types of people would come to your office on
3 the 54th floor?

4 A. All different types of peoples. We would get offers for
5 different businesses. People who were doing real estate
6 projects who needed capital would come to us. Private
7 companies that, you know, were starting out, Israeli companies
8 that they came over to make a presentation to us. We had a lot
9 of meetings with different charities. I myself personally was
10 busy a lot with kids at risk.

11 Q. So you were here when Mr. Steinberg talked about putting a
12 shingle up. Is it fair to say that you and Mr. Huberfeld had a
13 shingle up and people came to visit?

14 A. I'm not sure what you mean by a shingle.

15 Q. Knowing that you were a potential source of -- potential
16 source of funding for people starting out in business, looking
17 for capital.

18 A. Our community is a very close-knit community, and word gets
19 around. When people are successful and they have money, word
20 gets around twofold. There is somebody you should call up for
21 charity, and also if you need a business investment, come to
22 them, maybe they could invest in your business.

23 Q. What were some of the principal charities that you were
24 working on whose representatives came to your office?

25 A. We were working on an organization called *Ezer Mizion*.

Mc92Pla4

Bodner - Direct

1 Q. And what does that charity do?

2 A. That charity is basically a volunteer charity that brings
3 food to needy people. It has an arm of bone marrow. It
4 transfers bone marrow to patients. It finds bone marrow. It
5 does bone marrow drives and it does bone marrow for people who
6 need bone marrow transplants. It's basically a cancer
7 organization, filled with all cancer. When a person has it in
8 his family, somebody who has cancer, God forbid, the family is
9 basically disabled. They are busy the whole day taking care of
10 this patient. So *Ezer Mizion* has volunteers that come, take
11 the family, take the kid out to make a camp in the summer for
12 these kids that the parents could have a rest. This was one of
13 many organizations that we were busy with.

14 Q. Okay. Then you mentioned that you had people coming up in
15 connection with your work with kids at risk. Could you briefly
16 describe what that work was and some of the people who came up.

17 A. Unfortunately today in our community kids are unhappy.
18 Maybe it's too high pressure in the schools, maybe not, but
19 kids are unhappy and they stop going to school and they stop
20 adhering to the religion. They become irreligious and they
21 start taking drugs.

22 So I started with this, if I'm not mistaken, over 20
23 years ago, maybe it was -- it's 2022, maybe it was more than
24 that. And a parent called me up and he told me a friend of
25 mine, he says he has so many problems with his child. It's his

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Bodner - Direct

1 oldest child. And on the sabbath he sits in the room all day
2 and he listens to the radio, watches television, and he is not
3 adhering to the rules. So I told him I will call him up. Let
4 me meet with him. The fact that he came up to a beautiful
5 office in Carnegie Towers overlooking Central Park West enticed
6 him.

7 Then I used to look into what type of problems he has,
8 if he was -- you know, if he had mood disorders, if he had OCD,
9 obsessive/compulsive disorders, any type of disorders that he
10 had, learning disabilities, I would look into it and I would
11 get the right professional help for him. After that, I would
12 keep a constant contact with the child and get him -- I would
13 leave religion for the last. I wouldn't talk to him about
14 becoming back religious day one. First I would try to make him
15 happy. I would get him a job. I would make him a productive
16 human being. I had friends in all different types of work, and
17 I would ask them, together with myself, if we could higher
18 them. I would *shtup* them into a job, which means push. I
19 would push them into somebody who could get a job by somebody.

20 Q. Thank you.

21 THE COURT: Can I have the original question be read
22 by the court reporter, please?

23 (Record read)

24 THE COURT: So the operative word in that question was
25 "briefly."

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Bodner - Direct

1 THE WITNESS: I'm sorry.

2 THE COURT: Please keep that in mind.

3 THE WITNESS: I will. I'm sorry, I'm sorry.

4 BY MR. LAUER:

5 Q. So over the course of -- because I don't want to come back
6 to this topic, so when the Platinum was formed and you would
7 come to your office on the 54th floor, did you continue to have
8 young people come up as part of this program that you
9 personally worked on?

10 A. Yes.

11 Q. On -- did there come a time when you and Mr. Huberfeld
12 decided to look into forming a hedge fund?

13 A. There came a time.

14 Q. And can you fix that time for us approximately?

15 A. Approximately in 2002 or '3.

16 Q. And why did you -- you seemed to have been doing pretty
17 well. Why did you decide to form a hedge fund?

18 A. There was a crash in the Internet stocks on the stock
19 market. I think that was in 1998. So all these companies
20 had -- went from very high flying prices and they went all the
21 way down. And it wasn't a time to be able to make money to
22 invest capital in these type of companies. So base -- and
23 trading, I stopped trading once we started to become investors.
24 So basically we were looking for something to do. And Murray
25 had a friend, Izzy Englander, who at that time had a hedge fund

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Bodner - Direct

1 for Millennium Partners, and he suggested to Murray you should
2 try to open a hedge fund.

3 Q. And did you -- so did there come a time when you brought in
4 someone to run the fund?

5 A. There came a time. Basically we were in this office from
6 1996, if I remember correctly, and we were paying \$55 a foot,
7 which was very cheap rent. In 2002 and -- if I'm not mistaken
8 we had a 15-year lease, a 10- or 15-year lease. When we were
9 going to open a hedge fund, we decided -- I had a cousin. His
10 name was Mark Nordlicht. And I had heard of him that he was a
11 very good trader. He used to trade on the Exchange. He had
12 seats on the Exchange. And we offered him to become a full
13 partner with us, meaning if he will run the hedge fund solely
14 himself, we will give him one third of whatever we make in any
15 investments we make.

16 Q. Okay.

17 A. And if I could just finish, and we decided to keep the
18 hedge fund at the 54th floor in Carnegie Hall Towers because
19 the rent was very cheap. It was half price. So Mark was okay
20 with that.

21 But Mark did not want us as part of the hedge fund.
22 He wanted us to have one office. We took the office -- the
23 nice office overlooking Central Park and he gave us access that
24 we could use the conference room, which was next to that
25 office. He himself and his group, they were behind a glass

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Bodner - Direct

1 door, if I'm not mistaken, on both sides. That's where the
2 Platinum staff set -- sat, and he had a big office at the end
3 on the 54th floor.

4 Q. What was the arrangement in terms of finance? Did
5 Mr. Nordlicht put in seed money to start the fund?

6 A. If I remember correctly, he did not. Myself and
7 Mr. Huberfeld put in money.

8 Q. All right. And do you remember approximately how much
9 money you and Mr. Huberfeld each put in to start the fund?

10 A. I don't remember exactly. It could be anywhere from 10
11 million to 20 million each.

12 Q. And why does a hedge fund need that kind of money to start?
13 Why can't you start at zero?

14 A. You cannot start a hedge fund at zero because a hedge
15 fund's profits come from investments that it makes. So if a
16 hedge fund has zero money, you could sit and twiddle your
17 thumbs, you are not going to be able to make any money. If a
18 hedge fund has -- that's why hedge funds are looking to
19 constantly grow. The bigger they are, the more investments
20 they could make.

21 And a hedge fund manager is paid by the amount of
22 money in the fund and also how much the fund makes. It's
23 called a formula of 2 and 20. Two percent you get of the
24 capital. That means if a hedge fund has a million dollars,
25 they take off the top \$20,000 to pay for their expenses. And

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1 then at the end of the year, if they make money, if they make,
2 let's say, \$100,000 on that million dollars, they get another
3 \$20,000 as a fee. That's called a 20. They get 20 percent of
4 all the profits.

5 So if a hedge fund has a million dollars, it's limited
6 to the amount of money you could make. Here we were talking
7 about three partners trying to make money out of a business.
8 It wouldn't make sense to make \$20,000. the car fare coming in
9 from Monsey the few times a week I came in would be more than
10 that.

11 Q. So can you describe to the best of your recollection the
12 legal structure or the contractual structure that you,
13 Mr. Huberfeld, and Mr. Nordlicht agreed to in terms of who
14 would own the fund and who would -- how the fund would be owned
15 and who would actually run the fund.

16 A. The way we structured it was, I would continue, together
17 with Murray, on all our endeavors, all our deals, and that
18 enticed him to become a partner with us. At that time we were
19 negotiating to start a security company. It was after 2001,
20 September 11, and we had potential to start a very big security
21 company. We even had a meeting, some of my partners, with Rudy
22 Guiliani, who was a very big name then, to start a security
23 company together with him. And that's what enticed Mark
24 Nordlicht to join our partnership.

25 Q. But turning to the business and legal arrangement, did you,

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Bodner - Direct

1 Mr. Huberfeld, and Mr. Nordlicht agree on the structure for who
2 would own the fund and who would run the fund?

3 A. We agreed on who would own it and who would run it.

4 THE COURT: What did you agree?

5 THE WITNESS: We agreed that the owner of the fund at
6 this present time would be myself, Mr. Huberfeld, and
7 Mr. Nordlicht. And running the fund, Mr. Nordlicht wanted
8 sole -- he wanted to have sole discretion, making all
9 decisions. He didn't want us to mix into any decisions he made
10 or anything. He was the sole decision-maker in the fund.

11 Q. Did you and Mr. Huberfeld agree to that?

12 A. 100 percent.

13 Q. I would like to show you on the screen DX 159, the Mark
14 Nordlicht Grantor Trust. It is in evidence.

15 Now, Mr. Bodner --

16 A. Excuse me. Could I just read it a second?

17 Q. Of course, of course.

18 (Pause)

19 Q. Let me ask you a question and then you will see if you
20 actually need to read it further. We want to move it along.
21 We are breaking soon.

22 Do you see in the second paragraph it says, "The
23 trustee wishes to grant each of Manor Lane Management and
24 Grosser Lane Management the economic equivalent of a 24.999
25 percent passive interest"?

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Bodner - Direct

1 A. Yes, I see that.

2 Q. And can you tell us what is Grosser Lane?

3 A. Grosser Lane is a company that myself and my wife control
4 and we pay our bills from it and also we make investments
5 through it.

6 MR. LAUER: We offer DX 429.

7 THE COURT: I think it is already in evidence. If
8 it's not, it is received.

9 (Defendant's Exhibit 429 received in evidence)

10 MR. LAUER: Put up 429. Sorry. Trying to move it
11 along.

12 THE COURT: I'm sorry, what's the problem? 429 is in
13 evidence.

14 MR. HERTZBERG: No.

15 THE COURT: It's either previously been received or
16 it's received right now, so put another question.

17 MR. LAUER: If it's in evidence, then I will go to
18 another question. The document that the witness had -- was
19 asked about was 159.

20 THE COURT: I see.

21 MR. LAUER: That's fine.

22 THE COURT: So 429 is a new document. Are you
23 offering it?

24 MR. LAUER: Yes.

25 THE COURT: Any objection.

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1 MR. GLUCK: (Shakes head).

2 THE COURT: Received.

3 (Defendant's Exhibit 429 received in evidence)

4 BY MR. LAUER:

5 Q. Grosser Lane, which was yours and your wife's company, you
6 were a beneficiary of this Mark Nordlicht Trust which had the
7 interest in the Platinum Management business, right?

8 A. Correct.

9 Q. And the earlier document that I showed you said that you
10 had a passive interest. Do you understand what a passive
11 interest means?

12 A. A passive interest means that I have no say.

13 Q. While you had no say, is it fair to say that you and
14 Mr. Huberfeld could freely express your opinions to
15 Mr. Nordlicht?

16 A. In the rule of Mr. Nordlicht, there is not too much
17 expressing your opinion if you know Mr. Nordlicht.

18 Q. But you can -- from time to time you would express your
19 opinions --

20 A. From time to time I would tell him something, yes.

21 Q. And from time to time he would accept your opinions, right?

22 A. That time to time I don't remember. I'm sorry.

23 Q. Okay. Did there come a time when Mr. Huberfeld headed up
24 the asset lending fund?

25 A. It was basically an idea that myself and Mr. Huberfeld came

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Bodner - Direct

1 with, being that we were completely shut out of PPVA, meaning
2 we didn't have, you know, any say in any investments there, and
3 ourselves, this was our business. We were lending money,
4 again, assets and we knew this business, you know. We used to
5 negotiate -- I was called a good negotiator. We used to
6 negotiate with people if they needed a loan, they would put up
7 a certain asset, we would make terms with them; or if it was a
8 private company that needed a loan, we would try to get an
9 interest rate plus some equity in the company, which worked out
10 a lot of times for us. So we became --

11 Q. So did you and Mr. Huberfeld -- did Mr. Huberfeld head up a
12 new fund?

13 A. Yes. Together we decided that this would be a great
14 business. We were limited with the amount of monies that we
15 had, but it would be a great business. Since it's a hedge
16 fund, it could do the same strategies, lending money,
17 asset-based loans, all the type of business that we were doing
18 for ten years, and make returns. So you would make returns and
19 you would get much more if you were investing, if you build it
20 up to be a 50 or a \$100 million fund.

21 Q. Did this fund come to be known as Centurion?

22 A. It was known as Centurion.

23 Q. And did Mr. Huberfeld run it?

24 A. Mr. Huberfeld ran it.

25 Q. And was it owned the same way as Platinum Management?

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Bodner - Direct

1 A. To my recollection, it was owned like that, but I think
2 there was another small partner by the name of Gilad Kalter.

3 Q. Who was Mr. Kalter?

4 A. Mr. Kalter was a person -- when Murray started this fund,
5 Centurion, Mr. Kalter was a person who helped out a lot—I'm
6 not sure what his position was—and I think he wanted to have a
7 piece of the fund. So at that point instead of being
8 one-third, one-third, one-third, myself, Mr. Huberfeld, and
9 Mr. Nordlicht, we joined Gilad Kalter for a small percentage,
10 which I don't remember how much.

11 Q. And in terms of running the Centurion fund, who ran the
12 Centurion fund?

13 A. Murray Huberfeld.

14 Q. Did you run it?

15 A. No, I did not.

16 Q. Okay. now, in addition to putting in the seed money to
17 start the Platinum fund, did you and Mr. Huberfeld invest in
18 PPAV?

19 A. Yes, we did.

20 Q. And --

21 A. Excuse me. I'm not understanding. The seed money was an
22 investment.

23 Q. Oh, okay. And was that investment exclusively in your
24 individual name or in the name of family members?

25 A. I don't remember what our original investment was, but

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Bodner - Direct

1 ultimately I had money in the PPVA fund from my foundation, my
2 children, it's possible for my grandchildren, and for myself
3 and my wife.

4 Q. And approximately how much money did you have in the funds
5 that were managed by Mr. Nordlicht?

6 A. That's -- there was a time that Centurion turned into PPCO.

7 Q. Okay. So --

8 A. At that time Mr. Nordlicht ran both funds. I seeded
9 Centurion together with Mr. Huberfeld when he started the
10 credit fund. All of a sudden that changed over at a certain
11 time period to become another fund that Mr. Nordlicht ran. So
12 when you are asking me how much money I had, it depends on the
13 time.

14 Q. Okay.

15 A. In 2003 -- okay.

16 Q. So let me clarify it. There came a time when Mr. Huberfeld
17 stopped running Centurion and it was absorbed under the
18 umbrella of Mr. Nordlicht and was renamed the Platinum PPCO.

19 A. Correct.

20 Q. And so you had family money in both funds, right?

21 A. Correct.

22 Q. And both funds were managed by Platinum Management.

23 A. Correct.

24 Q. And Mr. Nordlicht was the manager and controlling person of
25 Platinum Management.

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Bodner - Direct

1 A. Correct.

2 Q. And --

3 THE COURT: I think you were asking—maybe correct me
4 if I am wrong—at that point in time how much money had he put
5 in.

6 MR. LAUER: Yes. Thank you, your Honor.

7 A. So at that point in time means when Nordlicht took over
8 both funds?

9 Q. What was the total of Bodner family money invested in the
10 funds that were being run under Mr. Nordlicht's control?

11 A. I'm giving you an approximate. It could be anywhere from
12 37 million to \$45 million.

13 Q. And did Mr. Huberfeld have a similar amount in various
14 foundations and family accounts?

15 A. We were similar.

16 Q. When Platinum went into liquidation in 2016, what happened
17 to the funds that you, your foundation, and your family had?

18 A. So far I haven't received a penny from the liquidator.

19 Q. Now, while Mr. Nordlicht was running the funds and you were
20 not, did you add value in various ways to the Platinum fund?

21 A. As the judge put it, I was a *macher*. A *macher* means
22 somebody who people respected in the Jewish community. The
23 Platinum funds was not an institutional fund. It was more
24 family and friends, religious people, Jewish people, in our
25 community. Our community means Brooklyn, the five towns,

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1 over -- Los Angeles, Chicago, and I was a person people
2 respected. I always tried to stay under the radar and do all
3 my charities without any fanfare. I stayed away from honors
4 and everything. But my name got out there because I was very,
5 very active, especially with kids at risk and other type of
6 stuff. So people respected me. So could be if people saw that
7 I was an investor in a fund, they would also want to.

8 Q. Now, you mentioned --

9 THE COURT: I'm sorry, counsel. I just want to alert
10 you that we have about three more minutes before we break.

11 MR. LAUER: Okay.

12 BY MR. LAUER:

13 Q. In addition to now having the Platinum fund, did you and
14 Mr. Huberfeld continue to invest privately?

15 A. What years are you talking about?

16 Q. Let's say between 2000 -- let's focus on what we will call
17 the relevant period, 2013, '14, '15, '16.

18 A. 2013, '14, '15, and '16, myself and Mr. Huberfeld did
19 invest still privately.

20 Q. Okay. And --

21 A. Also we had old investments that we had to take care of.

22 Q. Was Mr. Nordlicht in some of these private investments?

23 A. I think Mr. Nordlicht -- we gave Mr. Nordlicht an
24 opportunity. That was the deal when we started, that we would
25 be each an equal partner in the funds that he was doing all the

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Bodner - Direct

1 work for, and he would be an equal partner in any investment.

2 So I would have to show him any investment that myself and

3 Mr. Huberfeld invested in. If he invested in every investment?

4 No. Mr. Nordlicht was always very tight with liquidity. So

5 but certain investments he did invest with. So I don't

6 remember clearly which ones he was or not. But myself and

7 Mr. Huberfeld were always equal investors in investments.

8 Q. And from time to time did potential borrowers or people

9 looking for capital come to the Platinum offices or to your

10 office on the 54th floor?

11 A. That period of time the office was not on the 54th floor

12 anymore.

13 Q. Did there come a time when Mr. Nordlicht moved his group

14 down to the fourth floor?

15 A. Yes, but that's a discussion I would rather have on Monday

16 morning because it's going to take more than a minute. The

17 answer is yes.

18 THE COURT: That's fair. I know that you have to

19 leave. So the -- and maybe by breaking now you will be able to

20 reduce it to a minute.

21 So in any event, ladies and gentlemen, we have had a

22 very full but productive week.

23 On Monday, we will start kind of later, at 10:00

24 rather than 9:30 because of another matter that I have, but we

25 will go until 4:30.

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1 Do not even think about this case over the weekend.
2 Have fun, and have a very good weekend, and we will see you on
3 Monday morning.

4 (Continued on next page)

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(Recess)

THE COURT: Mr. Bodner, you are free to leave. I have some matters I need to discuss with counsel.

THE WITNESS: Thank you very much.

(Witness not present)

THE COURT: Everyone else be seated.

First, there was an outstanding item relating to possible recall of Mr. Scott on the question of 4 million paid to Rohm & Haas, something like that. The question, if I recall correctly, was I needed to hear from any person on the plaintiffs' side who had actually asked someone on the defense side for the backup to the chart that shows those figures. Who was that person?

MR. LAUER: So I think, as we have told them, we can't confirm that the request was made, so I --

THE COURT: That's what I am -- so is plaintiffs' counsel saying that the request was made?

MR. GLUCK: Not made.

THE COURT: Was not made.

MR. GLUCK: Not made.

THE COURT: I see. Okay. Then what needs to be done, if it hasn't been done already, if -- and I can't even remember at this time who was seeking it to introduce that \$4 million or for what purpose, but if someone is still seeking to introduce it, then you have to give backup to plaintiffs' counsel over

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1 the weekend so that if we have to recall the witness, we will
2 have it for that.

3 MR. LAUER: Fair enough, your Honor.

4 MR. GLUCK: Defendants.

5 THE COURT: Then there is, of course, the testimony of
6 Mr. Quintero. So the question is whether to interrupt
7 Mr. Bodner and hear the rest of Mr. Quintero or whether to
8 complete Mr. Bodner and then hear from Mr. Quintero. I am open
9 to either motion.

10 MR. LAUER: Well, I would respectfully request that we
11 start with Mr. Quintero. I have done most of the background,
12 but I think, in fairness to us, to the extent that there are
13 substantive questions to address Mr. Bodner with respect to the
14 matters --

15 THE COURT: Okay. That's a good point.

16 So I had told Mr. Quintero 9:30. Make sure counsel,
17 plaintiffs' counsel should tell him it is 10:00 rather than
18 9:30. So we will have him, and then we will complete
19 Mr. Bodner.

20 MR. LAUER: Your Honor, we have scheduling issues with
21 some of these other third-party witnesses. Is it okay if we
22 just defer Bodner for later?

23 THE COURT: No. I say that from the standpoint of the
24 jury although, frankly, I'm amazed you even want to do that,
25 because it seems to me—and this is as in all similar

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1 cases—the jury has been very anxious to hear from Mr. Bodner.

2 MR. LAUER: I know that.

3 THE COURT: So I think we should finish Mr. Bodner.

4 MR. LAUER: But we will do Quintero.

5 THE COURT: Quintero and then Bodner.

6 And I also think, along the same lines, that defense
7 counsel ought to really think about who else they want to call
8 and for how long. I mean, for example, we spent, what, well
9 over an hour in the end on Mr. Steinberg, which I think his
10 testimony was not irrelevant, but a pretty good argument could
11 be made that it was immaterial.

12 And in that regard, when lawyers have been involved in
13 a case, as all the fine lawyers have been for years, every
14 little nit seems important. But it's been my privilege to talk
15 to jurors, either directly or through my law clerk, after every
16 jury trial I have had for the last almost 27 years on the
17 bench, and that's over 300 trials. And those 300 juries, 300
18 times, so thousands of jurors, to my pleasure always zoom in
19 and tell me that in their deliberations they zoomed in on the
20 real issues, the important issues, and they spent very, very
21 little time, usually zero, on some of these nuances that seem
22 so important to counsel. I know there is -- particularly on
23 the defense side there is always a worry, gee, will plaintiffs'
24 counsel get up and say we never responded to X? And so we have
25 got to put in something. Okay. But I think you can make it

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1 very short.

2 MR. LAUER: Your Honor, I still have a suggestion.
3 With respect to some of the witnesses, if there could at least
4 be a suggestion for enhanced cooperativeness on agreeing to
5 documents, we can move the process with valuers and the
6 auditors. Quintero and -- one of the themes of the plaintiffs'
7 case is that the valuations were affected or artificially
8 propped up through basically concealment and lying to the
9 auditors, etc. That's sort of a subtext here. And it's
10 important for us to be able to show the jury that that's
11 precisely not true.

12 THE COURT: I encourage -- plaintiffs' counsel had
13 made a similar proposal at an earlier stage of the case, so I
14 encourage the parties who know this stage with all the
15 depositions, no one has any secrets, so why don't you get
16 together over the weekend and see what you can work out?

17 MR. LAUER: Thank you.

18 THE COURT: All right.

19 MR. GLUCK: One thing, your Honor.

20 THE COURT: Yes.

21 MR. GLUCK: None of the auditors or valuers have
22 been deposed. We cannot give valuation opinions for that
23 reason. He never chose to depose them.

24 THE COURT: Okay, but I thought it was just a question
25 of documents. But if you can't agree, you can't agree. I'm

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1 not about to force that.

2 I do think that we need to complete the evidence in
3 this case, worst case, by close of business Wednesday, and that
4 is what both sides have sort of flagged for me earlier. And so
5 I just flag that for you, because, for example, if I indicate
6 that a witness is limited to 15 minutes, counsel should
7 understand that, notwithstanding his creative arithmetic, that
8 doesn't mean 30 minutes. But you get the idea.

9 Okay. Is there anything else we need in this case?

10 MS. SHEN: Your Honor, can I just mark something on
11 the record as a matter of housekeeping? We had a couple of
12 transcription errors that we wanted to have the transcripts
13 corrected as we were getting the realtime. So on December 7
14 PX 367 should have been marked as PX 370. PX 739 should have
15 been marked as DX 39, PX 59 should have been marked as PX 593;
16 and then on December 8, what was marked as PX 687 should have
17 been DX 687 and PX 690 should have been DX 690.

18 THE COURT: So I take it there is no objection to
19 those corrections.

20 MR. LAUER: No.

21 MR. HERTZBERG: No objection.

22 THE COURT: Very good.

23 I am in awe of our court reporters because counsel for
24 both sides have at various times engaged in a campaign of
25 whispering, and they have had to deal with that. But I'm glad

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1 to have those corrections.

2 (Plaintiff's Exhibits 370, 593 received in evidence)

3 (Defendant's Exhibits 739, 687, 690 received in
4 evidence)

5 THE COURT: So I am not totally sure why Mr. Bodner
6 had to leave since we clearly have a *minyan* here. But, in any
7 event, anything else we need to discuss?

8 MR. LAUER: No, your Honor.

9 THE COURT: Anything from plaintiffs?

10 MR. GLUCK: No.

11 THE COURT: Very good. Thanks a lot. We will see
12 you -- why don't you guys come in five minutes before 10:00
13 just in case something develops over the weekend.

14 (Adjourned to Monday, December 12, 2022, at 9:55 a.m.)
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PLAINTIFF EXHIBITS

Exhibit No.	Received
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9491247
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1751254
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1731255
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4171260
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370, 5931360
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DEFENDANT EXHIBITS

Exhibit No.	Received
1701249
6221255
620.121281
4291347
739, 687, 6901360